

DEPARTMENT OF ENERGY'S BONNEVILLE POWER
ADMINISTRATION: DISCRIMINATING AGAINST
VETERANS AND RETALIATING AGAINST WHIS-
TLEBLOWERS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

AUGUST 1, 2013

Serial No. 113-75

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

86-720

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

DARRELL E. ISSA, California, *Chairman*

JOHN L. MICA, Florida	ELIJAH E. CUMMINGS, Maryland, <i>Ranking</i>
MICHAEL R. TURNER, Ohio	<i>Minority Member</i>
JOHN J. DUNCAN, JR., Tennessee	CAROLYN B. MALONEY, New York
PATRICK T. McHENRY, North Carolina	ELEANOR HOLMES NORTON, District of
JIM JORDAN, Ohio	Columbia
JASON CHAFFETZ, Utah	JOHN F. TIERNEY, Massachusetts
TIM WALBERG, Michigan	WM. LACY CLAY, Missouri
JAMES LANKFORD, Oklahoma	STEPHEN F. LYNCH, Massachusetts
JUSTIN AMASH, Michigan	JIM COOPER, Tennessee
PAUL A. GOSAR, Arizona	GERALD E. CONNOLLY, Virginia
PATRICK MEEHAN, Pennsylvania	JACKIE SPEIER, California
SCOTT DESJARLAIS, Tennessee	MATTHEW A. CARTWRIGHT, Pennsylvania
TREY GOWDY, South Carolina	TAMMY DUCKWORTH, Illinois
BLAKE FARENTHOLD, Texas	ROBIN L. KELLY, Illinois
DOC HASTINGS, Washington	DANNY K. DAVIS, Illinois
CYNTHIA M. LUMMIS, Wyoming	PETER WELCH, Vermont
ROB WOODALL, Georgia	TONY CARDENAS, California
THOMAS MASSIE, Kentucky	STEVEN A. HORSFORD, Nevada
DOUG COLLINS, Georgia	MICHELLE LUJAN GRISHAM, New Mexico
MARK MEADOWS, North Carolina	<i>Vacancy</i>
KERRY L. BENTIVOLIO, Michigan	
RON DeSANTIS, Florida	

LAWRENCE J. BRADY, *Staff Director*

JOHN D. CUADERES, *Deputy Staff Director*

STEPHEN CASTOR, *General Counsel*

LINDA A. GOOD, *Chief Clerk*

DAVID RAPALLO, *Minority Staff Director*

CONTENTS

Hearing held on August 1, 2013	Page 1
WITNESSES	
The Hon. Gregory H. Friedman, Inspector General, U.S. Department of En- ergy	
Oral Statement	8
Written Statement	11
The Hon. Daniel B. Poneman, Deputy Secretary, U.S. Department of Energy	
Oral Statement	16
Written Statement	19
Ms. Anita J. Decker, Bonneville Power Administration	
Oral Statement	23
Written Statement	25
APPENDIX	
Letter from Mr. Daniel P. Boneman to Chairman Issa and Rep. Cummings	60

**DEPARTMENT OF ENERGY'S BONNEVILLE
POWER ADMINISTRATION: DISCRIMINATING
AGAINST VETERANS AND RETALIATING
AGAINST WHISTLEBLOWERS**

Thursday, August 1, 2013,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:35 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Jordan, Chaffetz, Walberg, Lankford, Gowdy, Hastings, Meadows, Bentivolio, Cummings, Maloney, Norton, Tierney, Lynch, Connolly and Pocan.

Staff Present: Ali Ahmad, Majority Communications Advisor; Jen Barblan, Majority Counsel; Molly Boyd, Majority Senior Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; Caitlin Carroll, Majority Deputy Press Secretary; Sharon Casey, Majority Senior Assistant Clerk; Steve Castor, Majority General Counsel; John Cuaderes, Majority Deputy Staff Director; Carlton Davis, Majority Senior Counsel; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Professional Staff Member; Christopher Hixon, Majority Deputy Chief Counsel, Oversight; Mark D. Marin, Majority Director of Oversight; Tamara Alexander, Minority Counsel; Krista Boyd, Minority Deputy Director of Legislation/Counsel; Beverly Britton Fraser, Minority Counsel; Jennifer Hoffman, Minority Communications Director; Elisa LaNier, Minority Director of Operations; Dave Rapallo, Minority Staff Director; and Cecelia Thomas, Minority Counsel.

Chairman ISSA. Good morning. The committee will come to order.

We on the Oversight and Government Reform Committee exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective Government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers, because taxpayers have a right to know what they get from their Government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Today's hearing represents what we would consider the front line in the whistleblower protection issue. This committee's efforts, both in bipartisan legislation, the first time in more than a decade, to pass new whistleblower protection and our recognition that we need to hold Government accountable to the American people by protecting whistleblowers when they allege or uncover wrongdoing. This committee, on a completely nonpartisan basis, has always sought to protect whistleblowers. Whether they come forward in a Republican administration or Democratic administration; whether it points to the Oval Office or just to the office next door for some harassment, whistleblowers deserve to be heard and protected.

Two weeks ago, the Department of Energy inspector general issued a management alert warning about Bonneville Power. We do not seize on every management alert. We consider the seven day notification and these kinds of alerts as an opportunity to ask should we look into this, can we make a difference, is it appropriate for us to act, because what we see could go beyond the four corners of the particular agency or because there is more beneath the surface. In this case, the most important question for us is when Bonneville Power apparently and deliberately began disadvantaging veterans and other applicants. They did something that goes at the very heart of the Federal employment and hiring systems.

There are more or less one million Americans who put on a uniform every year and two million who do not. All of them are Federal employees. But a large number have done both. We have been well served by men and women who serve our Country at the risk of life and limb, and then go on to have short, medium, or very long careers of public service in our civilian workforce. Certainly, at the Department of Defense, the nexus between what they learned on active duty and what they do helping those who are still on active duty is critical.

At the Post Office, the largest single employer of veterans, men and women every day trust that their mail will be delivered by people whose integrity is shown by their willingness to put their life on the line.

Let me be perfectly clear. The primary concern we have today is the apparent retaliation against whistleblowers. It is illegal and we won't stand for it. We want to make sure the truth gets to the American people. We clearly believe in this case there are two issues: protect the whistleblowers and send a strong message from this committee that the special and earned status of hiring for our veterans is in fact codified in law and universally believed by people on this side of the dais.

Consequently, this hearing will be the beginning of what will be a dual investigation, one working hand in hand with the IG, one in which, as my ranking member and I coined in an earlier investigation, we will look over his shoulder.

However, we reserve the right to go independent if necessary. We do so because there are two issues. When it comes to investigating, IGs have certain privileges and authorities, but not as many as we have here. For that reason, at the beginning of this hearing I want to make it clear if the IG does not get full cooperation in the inves-

tigation, or if for any reason someone falls outside the ability for the IG to get testimony, we will back that authority up.

The Department of Energy's recent reversal of the retaliation against personnel is a positive step. I don't want to let that go unnoticed, but make no mistake: we expect people not just to be reinstated, but to be treated in a genuine, appropriate way as people who have done the right thing, not people who have broken some sort of silence within any agency.

With that, I thank our panelists and ask the ranking member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Today we are here discussing a preliminary management alert issued by the inspector general of the Department of Energy on July 16th related to the Bonneville Power Administration, also known as BPA. For those not familiar with BPA, it is a unit of the Department of Energy based in Portland, Oregon that is self-funded and receives no appropriation. It has approximately 3,100 employees, with no political appointees, and it supplies electricity from hydro and other types of power plants to western States, including California, Idaho, Nevada, Oregon, Utah, Washington, Wyoming, and parts of Montana.

The IG's alert covers two major allegations. First, it finds that BPA engaged in prohibited personnel practices from November 20th, 2010, to June 2012. Specifically, the alert states that BPA's actions resulted "in the inappropriate exclusion of veterans and other applicants from consideration for selection." The second major allegation is that "BPA initiated questionable adverse personnel actions" against employees who raised concerns about hiring problems with the IG and others.

The IG alert says this: While we are not in a position at this point to conclude that the actions taken thus far are retaliatory in nature, we are deeply concerned.

I am also very concerned. We are fighting a war that has lasted more than a dozen years. American soldiers are arriving home every day and they face common worries in my district and districts all over the Country. They ask themselves: How will I support myself when I take off these fatigues? How will I support my family when I hang up the boots?

For their service and sacrifice, words of thanks from a grateful Nation are not nearly enough. We need to continue moving service members from our armed forces to our workforces as seamlessly as possible.

In addition, our committee, in particular, takes very seriously its role with regard to protecting whistleblowers. I do not want to get ahead of the evidence or the IG's investigation, and I understand that there have not been any findings of retaliation, but we have to treat these allegations carefully, responsibly, and thoroughly. If allegations of discrimination against veterans or retaliation against whistleblowers prove true, those responsible must be held accountable for their actions.

Despite these troubling allegations, I am encouraged with the proactive nature of the IG's investigation and the very swift response of the Department of Energy. The IG made two preliminary recommendations in the alert while they continue the investiga-

tion. First, they recommended that all ongoing disciplinary actions against BPA staff be suspended until the IG completes its work and issues its final results. Second, they recommended that any employees facing removal or suspension be temporarily restored to their positions.

In response, the Department not only implemented these recommendations, but took a number of additional steps to aggressively address these issues. The deputy secretary named a new acting administrator of BPA, instructed the new administrator to immediately direct all employees to fully cooperate with the IG, initiated an immediate review of BPA management, and suspended all adverse personnel actions pending further review.

Let me read the IG's very positive assessment of the Department's actions to date: "The Department expresses concurrence with the facts presented, the conclusion reached, and the recommendations provided in its management alert. Notably, the Department initiated immediate corrective actions which were fully responsive to our findings and recommendations."

Finally, I understand the limitations of today's hearing. The IG's conclusions are preliminary. The IG has made it clear that the investigation is ongoing and we will look forward to a final report when the investigation concludes. Also, because we do not have final conclusions, we understand that today's witnesses may not be able to discuss some issues due to the Privacy Act and other constraints.

With that, I thank the witnesses for their participation in today's hearing and I look forward to the testimony.

With that, I yield back.

Chairman ISSA. Thank you.

All members will have seven days within which to submit their opening statements.

We now welcome our first panel of witnesses.

The Honorable Daniel Poneman is Deputy Secretary of the United States Department of Energy. Welcome.

The Honorable Gregory Friedman is the Inspector General of the United States Department of Energy and the primary reason we are here today. Welcome.

Anita Decker is the Chief Operating Officer for the Bonneville Power Administration, or was, and we will discuss that further.

Pursuant to the committee rules, I would ask all three of you please rise to take a sworn oath, and raise your right hands.

Do you solemnly swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth? [Witnesses respond in the affirmative.]

Chairman ISSA. Thank you. Please be seated.

Let the record reflect that all witnesses answered in the affirmative.

Pursuant to ensuring that all witnesses are ready and able to give testimony, I have just a few questions that are going to be required for Anita Decker.

We have been informed that DOE believes you are appearing in your personal capacity. Were you told that?

Ms. DECKER. Yes, I was.

Chairman ISSA. Ms. Decker, you are currently employed by the Bonneville Power Administration, is that correct?

Ms. DECKER. Yes, Mr. Chairman.

Chairman ISSA. Ms. Decker, you are currently being paid by Bonneville Power Administration, is that correct?

Ms. DECKER. This is correct.

Chairman ISSA. When were you first hired by Bonneville Power Administration?

Ms. DECKER. In October of 2007.

Chairman ISSA. Thank you. Have you been an employee of Bonneville Power Administration since then continuously?

Ms. DECKER. Mr. Chairman, there was a period of time when I was on a detail assignment for the Western Area Power Administration, from August of 2012 until April of 2013.

Chairman ISSA. And that falls within what many of us think of as Bonneville Power, this group of related organizations, is that correct?

Ms. DECKER. The Western Area Power Administration is not.

Chairman ISSA. It is not Bonneville, but it is one of the four.

Ms. DECKER. Correct.

Chairman ISSA. Okay. And this was an assignment that Department of Energy chose, to have you move from one to the other and had to be approved?

Ms. DECKER. That is correct.

Chairman ISSA. Okay. And I will ask this because it is required. Bonneville Power is part of the Department of Energy, is that correct?

Ms. DECKER. That is correct.

Chairman ISSA. The Western Area Power Administration is part of the Department of Energy, is that correct?

Ms. DECKER. That is correct.

Chairman ISSA. And the Department of Energy is part of the Executive Branch. I will answer yes for that one.

Did the Department of Energy pay for your transportation here today, as far as you know, either directly or through Bonneville Power?

Ms. DECKER. Mr. Chairman, yes.

Chairman ISSA. Are you receiving per diem for your travel here today, as far as you know?

Ms. DECKER. Mr. Chairman, yes.

Chairman ISSA. When were you placed on administrative leave?

Ms. DECKER. Mr. Chairman, I was placed on administrative leave on July 15th, 2013.

Chairman ISSA. And roughly when do you believe you were restored from that position?

Ms. DECKER. So, Mr. Chairman, I was restored on Sunday afternoon in order to just prepare for testimony and to appear today.

Chairman ISSA. Okay. Did you have access to official emails in preparation for today's hearing?

Ms. DECKER. Yes, I did.

Chairman ISSA. Were you instructed by the Department of Energy that you are here today only in your personal capacity? I asked this before.

Ms. DECKER. Mr. Chairman, that is correct.

Chairman ISSA. Who gave you that instruction?

Ms. DECKER. The instruction was provided by one of the Department of Energy's general counsel to my counsel.

Chairman ISSA. Okay.

Deputy Secretary Poneman, were you aware of that instruction?

Mr. PONEMAN. Mr. Chairman, when I read Ms. Decker's testimony last evening was when I saw the comment about the personal capacity. That was the first time I had heard about that.

Chairman ISSA. So you weren't consulted in this process?

Mr. PONEMAN. No. And there is a difference as I asked the question, because I hadn't seen it before. As I understood it when I asked our own staff, Ms. Decker is speaking in her capacity of her personal actions in this matter, but not as an individual citizen. In other words, she is restored to her Bonneville employee status to precisely cooperate with this committee.

Chairman ISSA. And I will shortcut as quick as I can through these questions.

Do you, Secretary Poneman, understand that there would be any restrictions on her full ability to answer about what she did in her official capacity during her entire tenure with the Department of Energy?

Mr. PONEMAN. Neither she nor anyone else would have any such restriction, sir.

Chairman ISSA. Do you agree that when someone is asked questions about what they saw, heard, and observed or did during the time in which they were a Federal employee, that is not a personal statement but, rather, an answer as to their professional activities?

Mr. PONEMAN. If the question is about professional activities, by definition that is what they are talking about.

Chairman ISSA. Okay. And the reason I have gone through this is it the chairman's decision that Ms. Decker, from what I can determine, is here as a Federal employee, in no way in a personal capacity. To the best of my knowledge, no one on the dais has any questions as to your activities outside of your official capacity as a Government employee. So although general counsel often makes statements, I want to make it clear, and if there is any question or dissent, I want to hear it, that, as Federal employees, you are here to represent the positions you have and the observations you have, and in no way is that personal.

Now, Secretary, you will speak on behalf of the Department of Energy from the standpoint of your opening statement and cleared activity. Is that your understanding?

Mr. PONEMAN. Yes, sir.

Chairman ISSA. Okay.

So I will recognize the ranking member if he has any questions.

Mr. CUMMINGS. I have a number of questions.

Chairman ISSA. I wanted to make sure this was clear, because we often do bring people in personal capacity. Whistleblowers, for example, are not here in their personal capacity, they are here on behalf of their activities related to the official activity. I wanted to make sure there was no misunderstanding that Ms. Decker is here as a Federal employee, here to discuss her activities as one of the many people we are very proud of as Federal employees with a long career, and not in some sort of non-Government way. And per-

haps lawyer have a technical understanding that I don't, but our counsels could find no basis for the word personal to be used.

Understanding, Ms. Decker, you do not speak on behalf of the Department of Energy, but you do speak on behalf of an organization you ran, and that is in both of your capacities.

Mr. Friedman, do you have any questions on this line of clarification?

Mr. FRIEDMAN. I do not, Mr. Chairman.

Chairman ISSA. Thank you.

Mr. Cummings.

Mr. CUMMINGS. Ms. Decker, first of all, thank you for being here. I think we can be even clearer, no matter what the terms are. You said that you were put on administrative leave, I think you said, on July 15th?

Ms. DECKER. That is correct.

Mr. CUMMINGS. And then you said that you were restored last Sunday, is that right?

Ms. DECKER. That is correct.

Mr. CUMMINGS. About what time was that? Somebody called you?

Ms. DECKER. Yes. I want to say that it was about 11:30 or so on Sunday morning, Sunday afternoon.

Mr. CUMMINGS. All right. But then you said that you were restored so that you could come back to do this hearing, is that right? What did you say?

Ms. DECKER. So, representative, what I understand is I was taken off of administrative leave for the sole purpose of preparing testimony for this hearing, and that when I returned to Portland I will be placed back on administrative leave.

Mr. CUMMINGS. All right. So now, with regard to your testimony, you mentioned in your personal capacity. Did you mention that? I think the chairman talked about it, personal capacity. Were you told that that is the range of your testimony would be, you would be testifying in your personal capacity?

Ms. DECKER. Yes, that is correct. What I was told was I would be testifying in my personal capacity of my personal knowledge and that I would not be speaking on behalf of Bonneville, and that DOE would be the spokesperson for Bonneville.

Mr. CUMMINGS. Based upon what you just said, do you feel limited in what you can say today? Do you believe that you are being limited in what you can say?

Ms. DECKER. I don't believe I am being limited in what I can say, but I would reiterate the instructions I have been told is that I am not speaking for DOE in regard to Bonneville.

Mr. CUMMINGS. So going back to what the chairman said, so we won't get caught up in legalese, and correct me if I am wrong, you feel that you are free today to speak under oath about what you have observed, what you have experienced, what you have seen in your capacity as an employee of Bonneville? Is that a fair statement?

Ms. DECKER. Representative, what I would say is that my personal knowledge does include what I have experienced, what I have felt, and what I have done while I have been at Bonneville, so I would say yes.

Mr. CUMMINGS. Very well.

And, Mr. Poneman, you said that you had no knowledge of this personal capacity situation? You did not?

Mr. PONEMAN. When I saw Ms. Decker's testimony last night, that was the first time I either saw or heard the phrase, sir.

Mr. CUMMINGS. So you just heard what she said, did you not? Did you hear what she said?

Mr. PONEMAN. Yes, sir.

Mr. CUMMINGS. And does that sound reasonable?

Mr. PONEMAN. To me, sir, it is pretty simple. And without getting caught up in the legalese, precisely because our policy is, and will always be, any Bonneville or any DOE employee has full freedom to cooperate with any proper investigation such as this one, it is to that purpose that Ms. Decker was restored. She was not restored in the other capacities of chief operating officer and so on. So I think the confusion might be the word personal refers to her personal knowledge of what happened, anything that is of interest to this committee. But in terms of the broader operations of Bonneville today over supply, Columbia River Treaty, all of that stuff is not within the scope of the restored—

Chairman ISSA. The good news is we are not going to ask about what the current load is with certain units offline or the capacity of transmission lines.

Mr. PONEMAN. I know you know about these things, Mr. Chairman.

Chairman ISSA. I do serve on the other committee, and some day we may—

Mr. PONEMAN. I recall. I recall, sir.

Mr. CUMMINGS. This is my last question. I note that there is a management alert and this management alert, on page 5, there is an attachment, and I am pointing this to you, Mr. Poneman. It says the deputy secretary also directed the administrator to immediately convey to all BPA employees that they can cooperate freely with the OIG and other investigations without fear of retaliation.

You are familiar with that?

Mr. PONEMAN. Yes, sir.

Mr. CUMMINGS. Is that accurate?

Mr. PONEMAN. Yes, sir.

Mr. CUMMINGS. Very well.

Chairman ISSA. I thank the gentleman.

We now recognize our first witness, Mr. Friedman.

STATEMENT OF THE HONORABLE GREGORY H. FRIEDMAN

Mr. FRIEDMAN. Chairman Issa, Ranking Member Cummings, and members of the committee, I appreciate the opportunity to testify at your request on the Office of Inspector General's July 2013 Management Alert concerning alleged whistleblower retaliation and prohibited personnel practices at the Bonneville Power Administration. Bonneville and its nearly 3100 Federal employees are responsible for marketing electric power to all or parts of seven or eight States in the Pacific Northwest.

My office is currently reviewing allegations that Bonneville engaged in inappropriate hiring practices that violated the rights of applicants for Federal positions, most notably applicants entitled to veterans' preference. During this review, we learned that Bonne-

ville employees who had raised questions regarding violations of personnel practices may have been subjected to retaliation and that several of these individuals had already filed retaliation complaints with the U.S. Office of Special Counsel.

As troubling as we found these allegations to be, our concern intensified when, in July of this year, Bonneville employees indicated that additional retaliatory actions were imminent. We deemed the sources of the allegations to be credible. Thus, we brought this matter to the attention of the Department's senior leaders in the July 16, 2013 Management Alert. We used management alerts in time-sensitive situations that require immediate management consideration. We concluded that expedited action to protect the involved Bonneville employees was of paramount importance. The Management Alert included recommendations to ensure that all Bonneville employees feel that they can report potential wrongdoing in an atmosphere free from retaliation.

Commenting on the Alert, the Department concurred with the facts, conclusions, and recommendations, and the Department outlined a list of corrective actions that had been taken or were to be taken, and informed us that the deputy secretary directed the administrator to convey to all Bonneville employees that they can cooperate freely with the OIG and other investigations without fear of retaliation.

I would like to address the status of our ongoing work regarding the core allegation that Bonneville had engaged in inappropriate hiring practices.

As background, on May 11, 2010, the president issued a memorandum requiring the use of category rating for personnel recruitment and hiring. One objective was to increase the candidate selection pool while still complying with merit system principles, including veterans' preference. Thus, as of November 1st, 2010, Bonneville was required to use category rating to rank candidates for competitive positions. One critical component of this process is that the quality category definitions, the basis for formulating the best qualified lists at Bonneville, must be developed before the vacancy announcement goes public and cannot be changed once the vacancy is opened. This is to assure fairness, equity, and consistency.

As noted, it was alleged that Bonneville's practices had effectively disadvantaged job applicants, most notably those entitled to veterans' preference. We found the Department had received the same allegations and initiated a review of relevant hiring actions in Bonneville's policies and practices. This resulted in the February 2013 memorandum to my office in which the Department itself identified prohibited personnel practices at Bonneville which it described as systemic.

We promptly initiated a review to determine the underlying causes of these problems. Our preliminary findings validated the concern that Bonneville had adjusted quality category definitions after vacancy announcements were closed and applications were received. These matters have also been the subject of internal reviews by Bonneville itself and by the U.S. Office of Personnel Management.

These examinations have been extremely revealing. Our summarization of the data developed by Bonneville shows that it had en-

gaged in inappropriate personnel practices in 65 percent of its competitive recruitments, that is, 95 of 146 cases, conducted from November 2010 to June 2012, confirming, in essence, the allegation that the best qualified list had been modified after applications were received. Clearly, as a consequence, veterans and other applicants were inappropriately excluded from consideration for job selection.

As has been noted, our review is still in process and, therefore, the statistical analysis that I just gave you may change as new information becomes available and as we analyze the new information.

We were told that Bonneville changed its work processes and issued new guidance in May 2012 to stop these practices; however, most importantly, Bonneville failed to take required action to notify the negatively impacted applicants and address the impact associated with the prohibited practices. As of June 2013, Bonneville's hiring authorities have been suspended. These actions were taken because both OPM and the Department concluded there were major errors in Bonneville's personnel files.

Our emphasis was and remains establishing the cause of the improper practices, and I would like to stress again that our Management Alert was preliminary. Our work with regard to the substances of these allegations is not complete and it continues. Additional interviews and document searches are underway. We intend to complete the effort as promptly as possible.

Mr. Chairman and members of the committee, this concludes my statement. I would be happy to answer any questions that you may have.

[Prepared statement of Mr. Friedman follows:]

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify at your request on the Office of Inspector General's (OIG) July 2013 Management Alert concerning alleged whistleblower retaliation and prohibited personnel practices at the Bonneville Power Administration.

Bonneville, a component of the Department of Energy, was established in 1937 as a self-funding agency that covers its approximately \$4.4 billion in annual costs by marketing electric power to all or parts of eight states in the Pacific Northwest. This electric power is generated by 31 Federal hydroelectric projects operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation, one non-Federal nuclear plant and several small non-Federal power plants. Bonneville is responsible for the sale and transmission of nearly one-third of the electric power used in the region it serves. These responsibilities are carried out by nearly 3,100 Federal employees.

Allegations of Retaliation

The OIG is currently conducting a review of allegations that Bonneville engaged in inappropriate hiring practices. Specifically, it has been alleged that the rights of applicants for Federal positions were violated, most notably applicants entitled to veterans' preference. During the course of this review, as a result of several interviews, we learned that Bonneville employees who had raised questions to their management regarding violations of personnel practices may have been subjected to retaliation. We were told that several of these individuals had already filed retaliation complaints with the U.S. Office of Special Counsel.

We found these allegations to be troubling. Our concern intensified when, in late June and early July of this year, Bonneville employees indicated that additional retaliatory actions were imminent. We deemed the sources of the allegations to be credible. Thus, we chose to bring the matter to the attention of the Department's senior leaders in a July 16, 2013, Management Alert.¹ The

¹ Management Alert on *Allegations Regarding Prohibited Personnel Practices at the Bonneville Power Administration* (DOE/IG-0891, July 2013), available at: <http://energy.gov/sites/prod/files/2013/07/f2/IG-0891.pdf>.

Management Alert is a reporting mechanism that we use in time-sensitive situations which, in our judgment, require immediate management consideration. Given the circumstances, we concluded that the threshold had been met in this case and that protecting the involved Bonneville employees was of paramount importance. In the Management Alert, we recommended that:

1. All ongoing disciplinary actions of the Bonneville Human Capital Management staff should be suspended until our inquiry has been completed and the final results have been provided to the Department for full consideration; and
2. In the case of individuals removed or on administrative leave pending removal, those employees should be temporarily restored to their positions.

We provided a draft of the Alert to the Department on July 11, 2013. On July 15, 2013, we received comments in which the Department expressed its concurrence with the facts, conclusions and recommendations provided in the Alert. The Department outlined a list of corrective actions that either had been taken or were to be taken. These included: (1) a request to Bonneville for all documentation related to proposed adverse actions against two Bonneville employees; (2) suspension of Bonneville's authority to take any adverse actions against another employee; and, (3) direction to Bonneville to stop any proposed removals and to provide the Department with all information on any adverse actions in process or under consideration. The Department informed us that the Deputy Secretary directed the Administrator of Bonneville to take no adverse personnel actions against employees and to immediately convey to all Bonneville employees that they could cooperate freely with the OIG and other investigations without fear of retaliation.

Hiring Reform and Authorities

As background, on May 11, 2010, the President issued a memorandum, *Improving the Federal Recruitment and Hiring Process*, requiring all executive Federal agencies to use "category rating" for personnel recruitment and hiring. This approach had several objectives, one of which was to increase the candidate selection pool while still complying with merit system principles and other requirements of Title 5, United States Code, including veterans' preference. The Office of

Personnel Management (OPM) delegated the competitive hiring authority to the Department of Energy and the Department, in turn, delegated this same authority to Bonneville. Effective November 1, 2010, Bonneville was required to use category rating to rate and rank candidates for competitive positions. Although category rating has many nuances and subtleties, one critical component is that the quality category definitions, the basis for formulating the applicant "best qualified list" at Bonneville, must be developed before the vacancy announcement goes public and cannot be changed once the vacancy is opened. This is to ensure that all candidates are treated fairly and equitably.

Allegations Concerning Personnel Practices

I would like to address the status of our work with regard to the core allegations that Bonneville had engaged in prohibited or inappropriate hiring practices, specifically by changing the quality category definitions. The complainants raised the concern that these practices had effectively disadvantaged job applicants, most notably those entitled to veterans' preference under both OPM and Department of Energy policies and regulations. We found that the Department had received the same allegations and initiated a review designed to examine relevant hiring actions and related vacancy announcements, and to evaluate Bonneville's policies and procedures. In February 2013, the Department furnished its findings to the OIG. The Department concluded that the allegations had merit and identified systemic, prohibited personnel practices.

The OIG promptly initiated a review to determine the underlying causes of the alleged prohibited personnel violations. Our preliminary findings validated the Department's conclusion that Bonneville had engaged in potential prohibited personnel practices by adjusting quality category definitions after vacancy announcements were closed and applications were reviewed. We noted that Bonneville employees responsible for rating and ranking applicants relied on informal, undocumented procedures in this regard. Bonneville claimed that its goal was to present selection officials with "manageable" applicant pools.

Our emphasis was, and remains, establishing the proximate cause of the improper practices. Let me stress, as noted in our Management Alert, that our work with regard to the substance of these allegations is not complete. Any information that was provided in the Alert or any information that is included in my testimony today is based on preliminary work products that have yet to be finalized. Additional interviews and document searches are underway. We intend to complete this effort as promptly as possible.

In addition to our own work and the review by the Department cited previously, this situation has been the subject of internal reviews by Bonneville itself and an examination by OPM. Final results of the OPM review have yet to be released in a formal report. Taken collectively, these examinations have been very revealing. For example, Bonneville's own data shows that it had engaged in inappropriate personnel practices in 65 percent (95 of 146 cases) of its competitive recruitments conducted from November 2010 to June 2012. The data, in essence, confirmed the allegation that the best qualified lists had been modified after applications were received, which was in direct contravention of OPM and Department policy. As a result, veterans and other applicants were inappropriately excluded from consideration for job selection. We were told that Bonneville changed its work processes and issued new guidance in May 2012 to stop these practices. However, it appeared that Bonneville failed to take required action to notify the negatively affected applicants and address the impact associated with the prohibited practices.

As of late June 2013, Bonneville's hiring authorities have been suspended. These actions were taken because both OPM and the Department concluded that there were major errors in the vast majority of the Bonneville files reviewed.

These are serious matters. As indicated, our work in this area continues and we will complete a report of our findings as quickly as possible.

Mr. Chairman and Members of the Committee, that concludes my statement and I will be happy to answer any questions you may have.

Chairman ISSA. Thank you.
Secretary Poneman.

STATEMENT OF THE HONORABLE DANIEL B. PONEMAN

Mr. PONEMAN. Thank you, Chairman Issa, Ranking Member Cummings, and distinguished members of the committee.

Before beginning my prepared remarks, I would like to pause to acknowledge the untimely passing of Mr. Benjamin Cool, a Wilson Construction employee who died earlier this week while working at a Bonneville Power substation in Oregon. Our thoughts and prayers go out to him and to his family. This tragedy starkly reminds us of the dangers, as well as the awesome responsibility, for those who work on our electric grid. It also reminds us of how important it is to make that extra effort to do our job safely and always to look for ways to improve our performance, and, indeed, our management principles tell us that we must do our work safely and continuously improve in our efforts.

I have been invited here today to discuss the Bonneville Power Administration and the allegations of questionable personnel practices at BPA. The Department of Energy takes these allegations very seriously. We share the committee's deep concern regarding the inspector general's preliminary findings. We have responded forcefully to those findings and continue to provide assistance to aid in the completion of the IG's investigation of BPA. We also continue to provide guidance and support to BPA management as they carry on the work of BPA in all of its dimensions, including human capital management, but extending to the full suite of BPA missions and all of their diversity.

In the matter being reviewed by this committee, as the IG recognized, the Department initiated immediate corrective actions which were fully responsive to its findings and recommendations so far. As the IG continues its investigation, we look forward to a full accounting of the facts so we can carefully consider and implement any actions that may be appropriate.

The history of BPA dates to 1937, when President Franklin Roosevelt signed the Bonneville Project Act to deliver the massive benefits of Columbia River hydro power, clean, inexpensive electricity to citizens of the Pacific Northwest. Four years later, BPA hired Woody Guthrie to write 26 songs in 30 days about the Columbia River hydro system for the princely sum of \$266.66. This is an organization, in short, Mr. Chairman, with a great history and a great tradition, and it has played a major role in the development of the Pacific Northwest.

For all its storied past, Bonneville remains vitally important today in serving the energy needs of the citizens of the Pacific Northwest. Specifically, it markets wholesale electric power from 31 Federal hydro power projects in the Columbia River basin. While part of DOE, BPA, as Mr. Cummings has noted, is self-funding and covers its costs by selling its products and services to ratepayers and through borrowing from the U.S. Treasury.

In 2012, DOE received a complaint alleging prohibited personnel practices at BPA and provided this information to the inspector general. The inspector general informed the Department that it had also received a similar complaint. The IG subsequently re-

quested that DOE review these matters. DOE conducted a review of the hiring cases identified in the initial complaint and briefed the IG on the findings. Included in the Department's findings was concern that BPA had not followed the personnel requirements related to veterans' hiring practices.

Based on these initial findings, DOE took a series of actions to address the situation at BPA. First, DOE required BPA to submit all cases involving hiring from the general public to DOE for review and concurrence before proceeding; second, DOE subsequently formally suspended the BPA administrator's authority to conduct hires from the general public; and, third, based on the preliminary findings from the June 2013 audit, DOE formally suspended BPA's authority to conduct hiring from within the existing Federal workforce.

Based on its June 2013 audit, DOE also outlined steps BPA needed to take to correct its hiring procedures. DOE continues to provide support to BPA to assist Bonneville in taking corrective actions as needed and to develop and implement sound human resource processes and procedures.

As the committee is aware, the IG and others have also indicated there were allegations of retaliation against BPA employees who were cooperating with the IG's investigation. Let me be clear. DOE is strongly committed to a workplace where all workers are free to speak out, voice concerns, or lodge complaints without fear of retaliation. For this reason we were seriously concerned when we learned, after the fact, that BPA had issued a notification of proposed removal against a potential whistleblower. DOE then took swift and decisive action.

First, DOE requested that BPA provide all documentation associated with proposed adverse actions; second, DOE temporarily suspended BPA's authority to take any adverse personnel actions and instructed BPA to provide DOE headquarters with all information on any adverse actions in process or under consideration; third, as has been noted already, I directed the administrator of BPA to take no adverse personnel actions against BPA employees, to immediately suspend any such actions that had already been taken, and to instruct any such employee then on administrative or any other type of leave to return to work immediately. I also directed the BPA administrator to provide a full, prompt report of any actions that conceivably could fall into these categories. Furthermore, I directed the administrator to immediately convey to all BPA employees that they can cooperate freely with IG and other investigations without fear of retaliation. Finally, I sent a team to BPA to conduct a management review and named Elliott Mainzer as acting administrator of BPA on an interim basis.

In conclusion, we recognize the committee's interest in this matter and share your objective of remedying any deficiencies in personnel practices at BPA. We look forward to a full accounting of the facts once the IG's investigation is complete so that we can evaluate the situation and, as necessary, build on the steps already taken to assure that BPA staff understand Federal hiring rules and have the capability and systems in place to implement them appropriately. BPA remains committed to performing its mission and to serving the Nation, the region, and its customers while ensuring

continuity and stability in its operations. The Department will be working actively to support Bonneville as it continues to fulfill these vital responsibilities and to make progress on critical issues facing the organization and the region. We are all grateful for the dedicated service of the thousands of BPA employees who strive every day to fulfill their mission.

Mr. Chairman and members of the committee, this completes my prepared statement. I would be happy to answer your questions at this time.

[Prepared statement of Mr. Poneman follows:]

**Statement of Daniel Poneman
Deputy Secretary
U.S. Department of Energy**

**Before the
Committee on Oversight and Government Reform**

U.S. House of Representatives

August 1, 2013

Thank you, Chairman Issa, Ranking Member Cummings, and members of the Committee. I am here today to discuss the Department of Energy's (DOE) Bonneville Power Administration (BPA) and the allegations of prohibited personnel practices at BPA detailed in the recent Management Alert issued by DOE's Office of the Inspector General (IG).¹

DOE takes these allegations very seriously, and we share the Committee's deep concern regarding the IG's preliminary findings of questionable personnel practices. We have responded forcefully and continue to work cooperatively to aid and assist in the completion of the IG's investigation of BPA. As the IG recognized, the Department "initiated immediate corrective actions which were fully responsive to [its] findings and recommendations" so far. As the IG continues its investigation, the Department looks forward to a full accounting of the facts so we can carefully consider any actions that may be appropriate.

Bonneville Power Administration

Based in the Pacific Northwest, BPA markets wholesale electric power from 31 federal hydropower projects in the Columbia River Basin, one nonfederal nuclear plant and several small nonfederal power plants. The federal dams are operated by the U.S. Army Corps of Engineers and the Department of the Interior's Bureau of Reclamation.

BPA sells power to electric cooperatives, municipalities, public utility districts, federal agencies, investor-owned utilities, direct service industries, port districts and tribal utilities. In addition, BPA operates and maintains 15,272 miles of transmission lines including 75 percent of the regions high-voltage transmission lines. BPA provides service to 483 transmission customers. Its service territory encompasses some 300,000 square miles and includes Idaho, Oregon, Washington, western Montana and parts of eastern Montana, California, Nevada, Utah and Wyoming. While a part of the DOE, BPA is self-funding and covers its costs by selling its products and services to ratepayers and through borrowing from the U.S. Treasury.

Allegations of Prohibited Personnel Practices at BPA

BPA's Federal workforce is administered under the civil service laws in Title 5 of the United States Code. Under Title 5, the Office of Personnel Management (OPM) has the ability to delegate to federal agencies most hiring and employment authorities—including the authority to hire Federal

¹ DOE/IG-0891, *Management Alert, "Allegations Regarding Prohibited Practices at the Bonneville Power Administration,"* July 2013.

employees, process personnel actions, establish and set pay, and administer labor and employee relations activities. OPM delegated all human resources authorities for the Department of Energy to the Secretary of Energy, and the Secretary then delegated these authorities to the Department's Chief Human Capital Officer. The Chief Human Capital Officer has further delegated these human resources authorities to other organizational elements within DOE, including BPA.

In 2012, DOE received a complaint alleging prohibited personnel practices at BPA and provided this information to the IG. The IG informed DOE that it had also received a similar complaint and subsequently requested that DOE review these matters. DOE conducted a review of the hiring cases identified in the initial complaint and communicated with the IG regarding its findings. Included in the Department's findings was concern that BPA had not followed the personnel practice requirements of Title 5, OPM regulations, and DOE policies and procedures in exercising its delegated authority to hire from the general public.

Based on initial findings, DOE took a series of actions to address the situation at BPA:

- On April 2, 2013, DOE required BPA to submit all cases involving hiring from the general public to DOE for review and concurrence before proceeding, as set forth in a memorandum to the Administrator of BPA and copied to OPM and IG.
- From April 22 through April 26, 2013, DOE participated in an OPM-led independent audit of BPA's hiring practices. The final OPM audit report has not been issued.
- On May 23, 2013, based on its preliminary findings from the April audit, OPM de-certified all BPA human resources employees that had been certified to process hiring from the general public.
- On May 24, 2013, DOE formally suspended the BPA Administrator's authority to conduct hires from the general public, as set forth in a memorandum to the Administrator of BPA and copied to OPM and IG.
- On May 29, 2013, DOE notified BPA that the Department's regularly scheduled Human Capital audit would be conducted from June 17 through June 21, 2013, two months earlier than planned.
- On June 21, 2013, based on the preliminary findings from the Department's June audit, DOE formally suspended BPA's authority to conduct hiring from within the existing federal workforce, and to classify all positions, as set forth in a memorandum to the Administrator of BPA and copied to OPM and IG.

Based on DOE's Human Capital Management Accountability Program audit, DOE outlined steps BPA needed to take to correct improper hiring procedures and identified factors that would be reviewed to assess compliance with federal hiring laws, rules, and regulations. DOE is continuing to provide support to BPA's human capital staff to assist them in taking corrective actions, as needed, and developing and implementing sound human resource processes and procedures.

Allegations of Retaliation at BPA

DOE is strongly committed to a workplace where all workers are free to speak out, voice concerns, or lodge complaints—with the Department, Congress, or other entities—without fear of retaliation. Consistent with that commitment, the Department directed the Administrator of BPA that there be no retaliation against any employees who may have raised concerns regarding questionable personnel practices at BPA. For this reason, we were seriously concerned when we learned, after the fact, that BPA had issued a notification of proposed removal against a potential whistleblower. DOE then took swift and decisive action:

- On July 8, 2013, DOE requested that BPA provide all documentation associated with proposed adverse actions against two employees on BPA's Human Capital Management staff that had recently come to the attention of DOE.
- On July 9, 2013, DOE temporarily suspended BPA's authority to take any adverse personnel actions against BPA employees upon learning that BPA was on the verge of proposing the removal of another BPA Human Capital Management employee. DOE directed BPA to stop that proposed removal and provide DOE with all information on any adverse actions in process or under consideration at BPA for further review.
- On July 10, 2013, I directed the Administrator of BPA to take no adverse personnel actions against BPA's Human Capital Management employees, to immediately suspend any such actions that had already been taken, and to instruct any such employee then on administrative or any other type of leave due to a proposed removal or suspension to return to work immediately. I also directed the BPA Administrator to provide a full, prompt report of any actions that conceivably could fall into these categories to the Department's Office of Human Capital Management. Furthermore, I directed the Administrator to immediately convey to all BPA employees that they can cooperate freely with IG and other investigations without fear of retaliation.
- I also sent a team to BPA right away to conduct a management review.
- On July 15, 2013, Elliot Mainzer was named Acting Administrator of BPA on an interim basis.
- On July 19, 2013, BPA Acting Administrator Elliot Mainzer sent an email to all BPA employees "[reiterating] BPA's absolute commitment to a workplace free of retaliation, particularly against those who raise concerns. We protect the right of employees to speak out, voice any concerns, or lodge complaints with any authoritative body as they see fit, without fear of retaliation."

Conclusion

BPA remains committed to ensuring continuity and stability in its operations and will be working actively to make sure it continues to make progress on critical issues facing the organization and the region. DOE is also committed to and has taken steps to ensure human resources offices within the Department adhere to all laws and regulations, including veterans' preference laws. We look forward to a full accounting of the facts once the IG's investigation is complete so that we can

evaluate the situation and, as necessary, build on the steps already taken to assure that BPA staff understand federal hiring rules and have the capability and systems in place to implement them appropriately.

DOE will work with the Acting Administrator of BPA to act quickly and constructively to resolve all the issues identified by the IG investigation, DOE's and the Office of Personnel Management's Human Capital Management Accountability audits, as well as to take all appropriate steps pursuant to the ongoing management review of BPA. We recognize the Committee's interest in this matter as well, and share your objective of remedying the any deficiencies at BPA. Mr. Chairman, and members of the Committee, this completes my prepared statement. I would be happy to answer your questions at this time.

Chairman ISSA. Thank you.
Ms. Decker.

STATEMENT OF ANITA J. DECKER

Ms. DECKER. Chairman Issa, Member Cummings, and distinguished members of the Committee on Oversight and Government Reform, I am here as a result of acceptance of the chairman's invitation, which I initially declined. Given my limited ability to prepare, the lack of final findings or resolution on personnel matters at issue and my tenuous position of being on administrative leave have given me pause.

On July 15th, as you have already established, I was placed on administrative leave by DOE. The memorandum I received recites allegations that BPA engaged in improper hiring practices, violations of veterans' preference and merit system principles, and allegations of whistleblower reprisal. There are no particular allegations against me specifically.

I have not been allowed to access the BPA buildings, documents, personnel, or computer systems up until this Sunday, so I have only had limited time to prepare, so I hope you will give me a little bit of grace for that.

I would like to state that I would never knowingly allow BPA to implement policies or practices that violate Federal veterans' hiring. I am proud of BPA's record of veteran hiring, both personally and professionally. My father served in the U.S. Navy; my stepbrother retired from active duty as a U.S. Marine; my stepsister left the Air Force after 14 years of service and then spent 19 years in the U.S. Air Force Reserves, including being deployed to Iraq. I have a stepson who served in the U.S. Navy who is now working for the Post Office as a contractor. So the importance of veterans' preference does not escape me; it has personal meaning for me. I have actively supported veteran personnel and I was extremely proud for Bonneville to be recognized for supporting veterans and for me personally to be recognized by Bonneville's veterans.

The main issue regarding BPA hiring practices had to do with BPA's interpretation and implementation in late 2010 of the category rating process envisioned in the Improving the Federal Recruitment and Hiring Process. BPA's implementation of how to apply the category rating was incorrect. That said, the issue that was identified by BPA staff, identified by BPA staff in May of 2012. At that time, more than a year ago, BPA stopped the practice that was in question.

In July of 2012, I learned that either there had been or there was going to be a complaint issued to the IG. I responded as described in my written testimony. When I left Bonneville in August of 2012 to serve as acting administrator of the Western Area Power Administration at the request of DOE, I thought the hiring issues would be timely resolved. Most importantly for me before I left was the fact that the hiring practice that had disadvantaged both veterans and non-veterans had been stopped.

I returned to Bonneville eight months later, in April of 2013. Upon return I found that the reconstruction process, the required process when a veteran has not been granted the proper preference, had not yet been completed. A variety of factors combined

to delay that resolution, but both BPA and DOE have first attempted to ensure that we have all of the issues that need to be remediated for before we begin remediation.

With respect to the allegations of retaliations against whistleblowers, I can assure this committee that I take that very seriously and I understand the sensitivities associated with protecting whistleblowers. While the actions in question in the IG Management Alert are in my line of responsibility, I am not the decision maker of the proposed actions. While I might be aware of some of the actions, my primary interest was are those actions following the appropriate personnel actions and processes that are designed to protect both the individual and the agency and taxpayers, and in this case Bonneville's ratepayers.

I also take performance management very seriously and believe the Federal personnel system contains checks and balances intended to protect the agency's ability to fairly manage performance and protect employees from retaliation. My personal belief, my training, my legal advice from BPA counsel have made it very clear there is zero tolerance for retaliation. It also counsels that making a complaint or other protected activity does not insulate an individual from performance accountability solely because that person engaged in a protected activity such as complaints or cooperating in an IG investigation.

In summary, in regard to retaliation, until the investigation, audits, and legal determinations are final, jumping to conclusions is inappropriate and may do unintended damage to effective and efficient government and to public servants.

In regard to veterans, we made a regrettable mistake. We stopped making that mistake over a year ago. I want to be part of making this right.

Mr. Chairman, I am happy to answer any questions.

[Prepared statement of Ms. Decker follows:]

Chairman Issa, Ranking Member Cummings and distinguished members of the Committee on Oversight and Government Reform:

I submit my statement concerning the subject of this Committee hearing. I am here this morning as a result of my reluctant acceptance of the Committee's invitation, which I initially declined given the limited ability to prepare, having to testify only from personal knowledge and the tenuous position of being on administrative leave and with no final findings available. On the advice of counsel, I am appearing rather than challenge the authority of this Committee to require me to appear by subpoena under the circumstances in which I find myself. I am part of the Bonneville Power Administration (BPA) management team; but I am here only in my personal capacity as DOE is the spokesperson for BPA at this hearing and has informed me that I am only to speak from my personal knowledge.

On July 15, 2013, I was placed on administrative leave by the Department of Energy. While on administrative leave, I am not allowed access to documents, personnel or the BPA computer system. This past Sunday afternoon, I was restored to duty only for the purpose of preparing my testimony and attending this hearing. I have now had access to my email and some documents. On Tuesday afternoon I was granted access to speak to some staff for the purpose of refreshing my recollection. I have realized the benefit of review as some of my initial recall may have been inaccurate or incomplete. I will make every effort to be accurate and complete in my responses to your questions today, but please recognize that I would have been better prepared if the circumstances had allowed the opportunity for more complete preparation.

To elaborate, I was placed on administrative leave, according to a memorandum provided me by DOE stating allegations that BPA engaged in improper hiring practices, violations of veterans' preference and merit system principles, and allegations of whistleblower reprisal. When I return to Portland, I expect I will be placed again on administrative leave.

I would like to say at the outset that I would never knowingly allow BPA to implement policies or practices violating the federal policy supporting veterans hiring. I am very proud of BPA's record of veteran hiring, both professionally and personally. My father served in the US Navy, I have a step-brother who is a retired US Marine, a step-sister who left active US Air Force service after 14 years only to spend an additional 19 years as part of the Air Force Reserves, including being deployed to Iraq, and a step-son who served in the US Navy, so the importance of veterans preference has a personal meaning to me. It's my understanding that BPA's hiring of veterans has been roughly comparable to other non-defense executive agencies. I have actively supported veteran personnel and was extremely proud to have received recognition for BPA and me personally for support of veterans at BPA.

The main issue regarding hiring practices had to do with BPA's interpretation and implementation in late 2010 of the category rating process envisioned in the May 11, 2010 memorandum for *Improving the Federal Recruitment and Hiring Process*. BPA's

interpretation of how to apply category rating was incorrect. The issue was identified by BPA staff in May of 2012. And, at that time--more than a year ago--BPA Human Capital Management stopped the practices in question.

In July 2012 when I learned an employee had made or intended to make a complaint to the DOE Inspector General, I requested a meeting of key BPA staff and counsel to review what had occurred. BPA HCM had already begun reviewing past hiring actions to identify impacts on veterans, but we needed to ensure we understood the scope of the impacts and evaluate the hiring cases for the period in question and determine where corrective actions needed to be made. This review was underway when I was asked to temporarily take another assignment but most importantly, the hiring practice that had disadvantaged both veterans and non-veterans had stopped.

In August 2012 I was temporarily reassigned as Acting Administrator of the Western Area Power Administration and relocated to Lakewood, Colorado. Another BPA executive took over as Acting COO at BPA. During my absence I understand DOE HCM were also reviewing specific BPA's hiring case files and policies as well. I returned to my position as COO at BPA nearly 8 months later, in early April, 2013.

Upon returning to BPA, I understood that the "reconstruction process" required when a veteran has not been granted the proper preference had not yet been completed as we were seeking further instruction from DOE to initiate the reconstruction process with respect to veterans. After my return, OPM led an audit with DOE of BPA hiring practices. The IG Inquiry, OPM audit and DOE review of the hiring cases have all been a factor in the delay in an attempt to ensure all issues are known that must be remediated.

With respect to allegations of retaliation against whistleblowers, I can assure the Committee that I take this very seriously and understand the sensitivities that can be associated with protecting whistleblowers. While these actions are in my line of responsibility, I am not the decision maker on the proposed actions. I was aware of some of the actions and my interest was that actions appropriately follow the processes that are designed to protect an individual and the interests of taxpayers, or in BPA's case, ratepayers.

I also take performance management very seriously and believe that the federal personnel system contains checks and balances intended to protect the agency's ability to fairly manage performance and protect employees from retaliation. My training and legal advice from BPA counsel makes clear the federal policy of "zero tolerance" for retaliation. It also counsels management that making a complaint or other protected activity does not insulate an individual from accountability just because the person may engage in protected activity such as complaints to or cooperation with an Inspector General investigation.

In the case or cases that are the subject of the IG Management Alert and a subject of this committee hearing the actions were not determined by a single person or department. In each case, the manager has worked with an Employee Relations Specialist and legal

counsel, both whom have special training and a duty to immediately report retaliation if it is their judgment it has or will occur when working through any proposals for personnel action.

My understanding is that the system exists so that an employee who believes he or she has been subjected to illegal reprisal may raise that issue and obtain relief if legal standards for proving reprisal are met. To my knowledge, the principles of balance between guarding against retaliation and managing performance were being followed.

In summary, in regard to retaliation, until the investigation, audits and any legal determinations are final, jumping to conclusions is inappropriate and may do unintended damage to effective and efficient government and public servants.

In regard to veterans, we made a regrettable mistake, we stopped making the mistake over a year ago and I want be part of making this right.

I will now answer any questions you have.

Chairman ISSA. Thank you.

I recognize myself.

Ms. Decker, you are Senior Executive Service.

Ms. DECKER. Correct.

Chairman ISSA. I just want you to be aware that there is a bill on the floor today. If that becomes law, it would require, before you be terminated, that you be told at the time that you would be removed, and with 30 days to remedy it, what you are being accused of. Not everyone on the dais is going to vote for that, but I will be one who will support that. I am not a fan of long administrative leaves and I am completely opposed to people being on the payroll, off the job, and neither accused nor in a position to even prepare to explain what happened as time goes by. I don't think that is good management practice.

But I want to ask you a specific question, and perhaps, in a sense, this will be more of a personal question. Could you briefly tell us when you learned that you were being put on administrative leave and the events that occurred in those first few minutes when that happened?

Ms. DECKER. Mr. Chairman, I had an email that said I needed to be available for a phone call at 9:00. A woman from DOE's Human Capital Office called me and said that an individual was going to bring me an envelope and there would be a knock at my door, and there was and I was handed an envelope, and inside that envelope was a memo from the woman I was talking to on the phone that said, as I said in my oral statement, Bonneville was under investigation and she had been delegated the authority to put me on administrative leave and, therefore, she was. And the letter gave instructions of what I needed to return in terms of Government property and that I would need to check in every day until further notice. And the gentleman who handed me the envelope came and I gave him my Government possessions and he walked me out of the building.

Chairman ISSA. Let me paraphrase that. They sort of took your gun and badge, and walked you out virtually at gunpoint; you were not allowed to do anything except walk out of the building and it was a fairly public display, wasn't it?

Ms. DECKER. Yes.

Chairman ISSA. Have you seen that done before at Bonneville? Is that a standard practice?

Ms. DECKER. I would not call it a standard practice. There are times when someone has been notified, like in a proposal, or if they are going to be on administrative leave for cause, that that is the process that Bonneville follows as well.

Chairman ISSA. But you were not told you were on administrative leave for cause.

Ms. DECKER. No.

Chairman ISSA. Okay.

Secretary, you talked in terms of a fairly aggressive action once you became aware of this, but let's go through, based on what Ms. Decker said. One, DOE knew about this more than a year ago, correct?

Mr. PONEMAN. Mr. Chairman, when you say this, what are you referring to?

Chairman ISSA. Well, you knew about the wrong use of the hiring practices, the discriminatory hiring practices in May of last year.

Mr. PONEMAN. Mr. Chairman, there was an anonymous complaint that was filed in May of last year, that is correct.

Chairman ISSA. Well, Mr. Friedman, maybe I will go through it with you quickly. Between May of last year and the time Ms. Decker was walked out of the building, was there a time in which whatever—and we don't want to get into details of why she is on administrative leave, but was there a time that people knew that there was a there-there that was well before that day? And, more importantly, as I understand it, Ms. Decker was gone for eight months. Basically, during the 90 days or less in which she returned, was there some action that triggered her being placed on administrative leave? And you don't have to tell me what it was, but administrative leave and the need to remove her from the building in that way.

Mr. FRIEDMAN. Well, let me treat that in two parts, Mr. Chairman. First of all, there were a number of people within the Department of Energy who were aware of the fact, from June 2012 to the date that these events took place that you are referring to, that there was a problem or there was an alleged problem with regard to personnel practices at Bonneville. So to set the stage, I think you are right about that.

With regard to any individual being placed on administrative leave, I did not recommend that, I didn't suggest it, I wasn't consulted, given a thumbs up or thumbs down, so I can't fill in the details as to what transpired and the thought process behind that.

Chairman ISSA. Okay, but at this point you have reached a conclusion, which was they certainly broke the rules when it came to hiring and it worked to the detriment of veterans.

Mr. FRIEDMAN. I reached the conclusion, the Department's Human Capital Office reached the conclusion, and the Office of Personnel Management have reached that conclusion.

Chairman ISSA. Okay. Two more quick questions. One, we have the name of five, but there are, if I understand, at least six people who qualify, in your opinion, as whistleblowers in this case who went to the Office of Special Counsel, etcetera.

Mr. FRIEDMAN. Yes, that is roughly correct.

Chairman ISSA. Okay. If the number is not right, in another setting, we would appreciate it. We would also appreciate the names.

Mr. Poneman, I am going to be very brief. One, you mentioned privacy in your opening statement. You do understand that we are not covered by privacy laws. Congress specifically exempted itself from that, so we are entitled to things which would otherwise not be available under the Privacy Act.

Mr. PONEMAN. Mr. Chairman, I am referring to restrictions I am told I am subject to under the Privacy Act, sir.

Chairman ISSA. Okay. Because we have a number of things we want to make you aware of. First of all, we have sent you two letters; one received no response whatsoever, and that was July 16th, and the second one we are not happy with the response and we will talk to you offline. Before I yield to the ranking member, the point that I want to make is this: we expect if something cannot be said

in an opening hearing, if it is sensitive, prior to that hearing we get a full and complete either in camera or otherwise arranged review. We are not as well prepared as we would like to be today particularly because immediately after the notification we sent a letter and got no response, and the letter was addressed to you.

Mr. PONEMAN. Congressman, we always seek to being cooperative with this committee. It was my understanding that the letter that had been sent was responsive to both of your incomings, which came in the space of a couple of days.

Chairman ISSA. Well, Mr. Secretary, just so you know, and I am going to yield to the ranking member, you didn't even call us and, no, there was no written response. So you represent the Administration. Understand this is an Administration who has systematically not responded. So we have known each other a long time, but you get a little tarred and feathered if you act like many other Administration officials and we get that kind of non-response. This is not something, as I told you when we talked privately, this is something where we think it is fairly local, fairly contained, but it really encompasses an important message, both on whistleblowers and veterans, that I think the committee wants to make sure that we shed light on and spread the word throughout the Administration. So I am not going to belabor this. I expect that we get full cooperation. You and I have a past where I think we have great respect for being able to work these things out.

Mr. Cummings.

Mr. CUMMINGS. Speaking of what the chairman left off, I have a letter here dated July 24th, 2013 that I received a copy of that was addressed to the chairman from Eric Fygi?

Mr. PONEMAN. Fygi, sir.

Mr. CUMMINGS. Were you aware of this letter?

Mr. PONEMAN. Yes, sir.

Mr. CUMMINGS. It seems to be not your response, but he refers to the letter of July 16th and July 17th in this letter. Were you aware of this?

Mr. PONEMAN. Yes, sir.

Mr. CUMMINGS. But you did not personally provide a response to the chairman, is that right?

Mr. PONEMAN. It is my understanding that this letter, I think, is fairly standard procedure, was the response from the Department on my behalf, and I am here today, sir, as I always do appear because we do completely accept the oversight authorities that you all have and we are committed to being cooperative.

Mr. CUMMINGS. Mr. Friedman, let me ask you this. In response to one of the chairman's questions just a moment ago, you said that you had nothing to do, you rendered no opinion with regard to Ms. Decker being placed on administrative leave. Is that what you said?

Mr. FRIEDMAN. Yes. I think, in fairness, Mr. Cummings, that I was told a day or two in advance that that was the plan, but it was not my recommendation.

Mr. CUMMINGS. Is this something you would opine on? I mean, is that something that you would normally provide an opinion on? I am just curious.

Mr. FRIEDMAN. Under these circumstances, probably not.

Mr. CUMMINGS. I see. You sounded as if you were disappointed that you didn't have something to say about that and I just wanted to clear it up.

Mr. FRIEDMAN. I appreciate the question. The answer is I conveyed a disappointment, that was not accurate.

Mr. CUMMINGS. All right. Mr. Friedman, your Management Alert says this, "Bonneville engaged in prohibited personnel practices in 65 percent of its competitive recruitments conducted from November 20th to June 2012. I have to tell you, as I listen to all of this, having been, in my early practice, in the late 1970s, to be in civil rights practice and to have seen so many people discriminated against, I take this whole episode very seriously because I know the damage that it does. As far as I am concerned, it is criminal when people deprive people of their rightful opportunities. But can you explain to me, very briefly, how veterans applying for these positions were disadvantaged by these actions?

Mr. FRIEDMAN. Yes. It is nuanced and subtle, but let me try to make it as simple as I possibly can. Under the system that was in place after the president's memorandum, and was in place in Bonneville in November of 2010, essentially a best qualified list was derived and a formula was created to set the parameters for the best qualified list. Veterans, by definition, if they met the best qualified list, went to the top; they had to be selected. They could have rejected the job offer, but they had to be selected. What Bonneville did is they adjusted the criteria after the fact. So instead of a rating of 90 to 100 falls in the best category list, it was modified from up to 95 being the lower threshold and, in effect, everyone who scored from 90 to 95 or 94, depending upon how the threshold was changed, was essentially excluded from consideration, and vets were in that. Vets and non-vets, people who were entitled to veterans' preference and those that were not were essentially excluded from further consideration as a result of changing the bottom cut line.

Mr. CUMMINGS. You said vets and non-vets. So how did we get zeroed in on vets? In other words, if there are other people, women, African-Americans? I am just trying to figure out why we zeroed in on vets. And don't get me wrong. I think it is very important that we address vets, but I am trying to figure out. Take me there. Help me with that.

Mr. FRIEDMAN. I understand your point, Mr. Cummings, I believe. First of all, the allegations that we received specifically indicated that vets had been disadvantaged. But you are absolutely correct, there was a population that was disadvantaged that included, most likely, and we don't know specifically because the reconstruction that has been talked about has not taken place, but it no doubt included women, minorities, a broad cross-section of applicants.

Mr. CUMMINGS. This is an ongoing investigation, is it not?

Mr. FRIEDMAN. Yes. Can I qualify?

Mr. CUMMINGS. Sure.

Mr. FRIEDMAN. It is not, at this point, an investigation. Important distinction. It is an inspection and it is an allegation-based inspection.

Mr. CUMMINGS. Would you supply us with the information as to the other folks that may have been discriminated against here, that may have fallen in that category?

Mr. FRIEDMAN. The answer is I can't do it immediately.

Mr. CUMMINGS. I know that.

Mr. FRIEDMAN. No, at some point the Department is going to have to go, either internally or using consultants, on a case-by-case basis and reconstruct each one of those vacancy announcements to provide the information that you are looking for, Mr. Cummings.

Mr. CUMMINGS. How many veterans are we talking about here?

Mr. FRIEDMAN. If I knew the answer to that question, I could answer your earlier question. We don't know. But in the 20 cases that the Department looked at, there were 35 vets that were disadvantaged, in just 20 cases.

Mr. CUMMINGS. At this point, do you know why employees were doing this? Were they intentionally trying to exclude veterans or were they just trying to reduce the number of total applicants they had to consider? You have heard Ms. Decker's testimony that there may have been some confusion with regard to how to do this scoring.

Mr. FRIEDMAN. Well, let me try to break it down.

Mr. CUMMINGS. Break it down.

Mr. FRIEDMAN. First of all, Bonneville personnel indicated that there was confusion in terms of the policy and the procedure. I have no basis for disputing that except that, Mr. Cummings, a fair person who would read the direction in the policy, it was crystal clear. So I don't suggest that these people were misleading us or lying to us; I would suggest that the credibility in terms of that line of thinking was really in doubt.

Secondly, I am sorry, could you go back to the first part of your question?

Mr. CUMMINGS. Do you know——

Mr. FRIEDMAN. The Bonneville personnel involved indicated that the reason they did it, and you hit upon it in your question, was that they were trying to reduce the size of the pool that was going to the selecting official, to make it manageable.

Mr. CUMMINGS. Finally, Ms. Decker, as the chief operating officer of BPA, let me give you an opportunity to respond to the IG's finding. Do you agree with the IG that BPA engaged in prohibited personnel practices during this time frame to the detriment of veterans? And my last question is what is your sense of why this happened? Was it intentional? Was it poor training?

Mr. DECKER. Representative, the bottom line is I agree with the IG's findings. We did apply and implement the category rating incorrectly. I think there is not a dispute with Bonneville. Mr. Friedman stated that OPM found that, that DOE found that, that the IG found that. Bonneville also found that and is why we stopped the practice. We found that we had implemented it incorrectly. I do not believe that it was intentional, because the rationale, if you consider that we moved the line, which that is what the intentional act, of moving the line. We intentionally did move the line. Why we did it was because we were misinformed or didn't understand how to apply it correctly. But when we moved the line, that line didn't then exclude all veterans, but it excluded that pocket of vet-

erans. So say it was from 90 to 100 percent and we moved the line to 95. Anyone that was in that 90 to 94 percent suddenly got excluded. But anyone that was above the 95 percent line, which did include veterans, in fact still, was referred to the hiring manager. I believe it was not an intentional act.

Mr. CUMMINGS. Do you think it was poor training?

Ms. DECKER. I do believe that it was poor training. As I understand it, folks had some training. I think the training was deficient. And I think that the retraining that is going on now will rectify that. But we did implement a faulty implementation. That is not in dispute.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Thank you. I just want to have Mr. Friedman follow up on the effect. And I will run you through real quick numbers and you tell me if this is correct. You have 50 slots to be hired. You have 50 people in the top 5 percent and you have 100 people in the top 10 percent. By going to a 10 percent mark to a 5 percent mark, let's assume for a moment that there are 25 veterans in the top 5 and 25 veterans in the second 5. If you take 10 percent, 50 veterans get 50 slots. If you take 5 percent, 25 veterans get the slots and 25 non-veterans get it. Is that roughly the arithmetic, the way it works, because veterans flow to the top? The smaller the group, the more chance you have of essentially, with a given amount of slots, running out of veterans and taking other people. Is that what you found in your inquiry?

Mr. FRIEDMAN. Mr. Chairman, I am not sure I completely follow your numbers, but, in principle, you have it right. But just let me clarify one thing. It is not going to the top, it is more severe than that; it is they must be offered a position. So they get a primacy that is extremely—

Chairman ISSA. Right. And I said to the top in the sense that if there is only 50 slots and there are 60 veterans, only 50 get offered. So it is very much like the gentleman said, and I think it is a good point, it is like civil rights discrimination. If you create an environment in which you exclude a group of people, for whatever characteristic, that would get something, they don't get it, and that is effectively what you found in your investigation. So misunderstanding 5 to 10, somebody probably understood the effect of how many of this particular group that uniquely would be offered a position if they were on that list, you knew you were excluding them by definition, because you knew the size of the hiring, so you knew the size that were not going to be included. And I think Ms. Decker said it, it wasn't always the same, it was 94 or 95 percent. Is that correct?

Mr. FRIEDMAN. Well, I agree with you, Mr. Chairman, but I would like to draw a distinction between recognizing that people who are entitled to veterans' preference were, by definition, now below the line, therefore would not be considered in contrast to saying that it was done intentionally to disadvantage the vets. I am not there yet.

Chairman ISSA. Okay. Well, we look forward to that continued process.

I am going to go out of order to recognize the chairman of the full Resource Committee because he also has a hearing. Mr. Hastings.

Mr. HASTINGS. Thank you, Mr. Chairman, for your accommodations and to allow me to come in here after my colleagues. I have been chairing a hearing on the transparency and the scientific integrity of the Endangered Species Act, not an insignificant issue.

The subject of this hearing is of considerable interest to me for multiple reasons, both as a member of this committee with oversight responsibilities and also chairman of the Natural Resources Committee, which has jurisdiction over the Bonneville Power Administration and other power marketing authorities. That is why that interest is there.

It is also of interest to me because of the importance of upholding promises made to our Nation's veterans and policies governing their hiring by Federal agencies.

Lastly is a parochial interest to me, because the district that I was elected to represent, BPA is a very important part of that because it provides the wholesale power, the transmission to the greater northwest. And I might add, Mr. Chairman, that agency is fully founded by ratepayers.

As a result, the Northwest Congressional Delegation has long worked in a bipartisan way on overseeing BPA. So when it comes to these allegations, there clearly is bipartisan support in seeking the truth and ensuring that the appropriate responses to make certain BPA is operating properly so it can move forward in the future.

There should be no doubt on the part of any person or agency that the Congress takes fair treatments of its veterans very seriously. Allegations of improper actions must be properly and carefully investigated. So I encourage the Office of Inspector General to be both thorough and timely in completing its reports. The full facts obviously need to be known.

This is important. The full facts, which we do not have here today, are needed to be able to fairly and accurately assess the actions of BPA and DOE to determine how to move forward on this point. And let it be clear, the actions of DOE officials are certainly under scrutiny, at least from my perspective as the chairman of the Natural Resources Committee.

Before these allegations ever came to light, there have been serious bipartisan questions about this Administration's intentions as it relates to power marketing authorities, or PMAs. For months, dating back to last year, I have sought documents and information from DOE concerning what is commonly known as the Chew memo, a directive from then Secretary Chew to the PMAs that threatened to arbitrarily increase electricity rates of 40 million Americans in order to pursue questionable energy dictates. To be very blunt, Mr. Chairman, DOE has not been transparent in that regard. In fact, for months DOE has been uncooperative in this regard. DOE owes the Committee on Natural Resources the request that they had for documents surrounding this.

BPA and PMAs have an established mission under the law. This is important. And this mission should not be subject to political interference to pursue particular policy penchants of any presidential

administration, whether that administration is Republican or Democrat. Oversight of both of these matters will continue from the perspective of the Natural Resources Committee and I certainly intend to fully participate in any future actions by this committee.

Once again, Mr. Chairman, thank you very much for your courtesy in allowing me to come here after leaving my hearing.

Chairman ISSA. Would the gentleman yield briefly?

Mr. HASTINGS. I would be happy to yield.

Chairman ISSA. Thank you.

Secretary Poneman, I want to run very, very quick questions, because the short response we received from Eric Fygi, we had asked a question about potential for retaliation and directives, and we got an answer saying that you didn't order or tell people not to respond. But I want to go through something quickly. Did you give a directive, verbal or otherwise, to anybody at Bonneville Power not to discuss the situation with anybody outside the BPA? In other words, did you have a conversation with somebody who then could have acted on your statements?

Mr. PONEMAN. I certainly have frequently, Mr. Chairman, said we are one organization and we need to coordinate our communications when we are dealing with the outside world, yes.

Chairman ISSA. Okay, so somebody could have taken your statement that we have to coordinate to mean that somehow people should only answer questions coordinated or talk to Congress on a coordinated basis.

Mr. PONEMAN. I have no idea what they read into my statements, but, as I said, Mr. Chairman, it is our policy that we speak with one voice and we always seek to coordinate our messaging to the public, to the Congress, to the press, and so forth.

Chairman ISSA. Well, Mr. Secretary, it concerns me that you say that. You don't have to coordinate the truth; you don't have to prepare to tell the truth. The fact is that we expect people to be told something closer to your original opening statement, which is that you are free to talk to congress; it is not only your right, but it is your responsibility, and that although notification may in some cases, if we classify notification, may be appropriate, that coordinating is a term or code, in my opinion, for come to us, let us tell you what to say, let's talk about what you would say. That kind of coaching is outside what we would consider to be a free exchange that encourages people to tell us, right or wrong, what they think happened.

Mr. PONEMAN. Let me be very, very clear about this, Mr. Chairman, because I think this is a very important question that you raise. It is absolutely fundamental, as a matter of fairness, as a matter of everything that we stand in our management principles and everything else, that any individual, be they a Federal employee or a contract employee, must be free at any and all times to cooperate fully, to step forward, to express any concerns, tutored or untutored, whatever is on their mind, they have to be free to step forward and say exactly what they think to anyone. I have been very clear about that consistently.

That is a very different thing than assuring that one's policy responses in a very complex organization, with a lot of different

issues, river treaties, rate cases, and so forth, it is confusing and inaccurate if we then convey 115,000 views out of 115,000 people.

Chairman ISSA. I am going to Mr. Lynch, but we have been told by staff at Bonneville Power they are under the impression they are not to speak to anyone outside of Bonneville Power Administration or DOE about this situation. That is their impression when they have said I can't speak to you because that is my understanding. And, of course, that thwarts our investigation, which isn't that much of an investigation in the sense that we are very, very much just trying to look over the shoulder of the IG, get comfortable so that we can make an assessment on a Government-wide basis. So we have been a little surprised that they have the impression that you say you are not trying to give them.

Mr. PONEMAN. I am surprised too, Mr. Chairman, because everything I have said verbally and everything I have put out in emails and so forth has said everybody is free to step forward without fear of reprisal or retaliation. I have been absolutely consistent in that.

Chairman ISSA. Or coordination, hopefully, in the future.

Mr. CUMMINGS. Mr. Chairman, unanimous consent to have one minute just to clear this up.

Chairman ISSA. The gentleman is recognized for one minute.

Mr. CUMMINGS. Thank you very much.

I want you to listen to what I am saying very carefully, because I don't want misimpressions. But I also want to know your answer. You haven't done anything to stop anybody from telling the truth, have you?

Mr. PONEMAN. Absolutely not, sir.

Mr. CUMMINGS. I want to make sure that is clear because we want the truth, as I have said many times, the truth, the whole truth, and nothing but the truth. So I just want to make that clear.

Chairman ISSA. Thank you.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

I want to thank the witnesses for coming before the committee to help us with this. I am the former chairman, now the ranking member of the Subcommittee on the Federal Workforce, so I am a big champion of veterans' preference. Matter of fact, the distinguished veterans of the United States Armed Forces have enjoyed veterans' preference for hiring in Federal positions since the Civil War, the American Civil War, and well deserved, I think. The long-standing Federal policy of veterans' preference in hiring was borne out of our collective recognition of the immeasurable sacrifices that our brave sons and daughters in uniform have made on behalf of this grateful Nation. The veterans' preference has been codified in law, including the landmark Veterans' Preference Act of 1944 and the Veterans Employment Opportunity Act of 1998, and other Federal statutes. So it is a matter of law. It is not a suggestion; it is a priority that we have recognized and it needs to be followed. These veterans have earned this.

And it is important to remember that for this workforce that we are considering of veterans, the Gulf War veterans, Iraq veterans, Afghanistan war veterans, this is a volunteer force and many, many, many of them have served multiple tours of duty where they have not only put their civilian careers on hold, but also their per-

sonal lives on hold so that they can serve this Country. So these laws for veterans' preference also reflect our national commitment to ensuring that our men and women in uniform are not penalized because they have served multiple tours in Iraq and Afghanistan and in the Gulf. So with that interruption in their civilian careers, if they don't get veterans' preference, they are penalized. So this is an affirmative step that we are taking to make sure that they are not penalized for their duty to this Country.

Now, I am greatly concerned by the inspector general's preliminary findings set forth in the July 16th Management Alert, and I am going to quote from them. He says BPA engaged in hiring practices that "effectively disadvantaged veterans and other applicants and were inconsistent with the concerted efforts by the Federal Government to ensure that veterans receive appropriate preferential treatment in the hiring process."

Ms. Decker, I appreciate you haven't had much time to prepare, but I have to ask you, in the report, the Alert says "We have received a number of complaints from the ACM staff members alleging that they were disciplined because they had communicated hiring problems to Bonneville management, to the Office of the Inspector General, and/or to Human Capital officials." You are aware of these allegations, correct?

Ms. DECKER. I am, representative.

Mr. LYNCH. Okay. Let's talk a minute about these disciplinary actions, which trouble me greatly. Ms. Decker, in your testimony you stated that while these actions are in my line of responsibility, I am not the decision-maker on the proposed actions. That is your statement. Ms. Decker, which management officials at BPA were the decision-makers who proposed and implemented these adverse personnel actions?

Ms. DECKER. Thank you, representative. So just maybe talk a little bit about structure for a second.

Mr. LYNCH. No, no, no, no, no, no, no, no, no. No, no, we are not going to talk about structure and things like that. I want the names of the people. If you are saying it was in your line of responsibility.

Ms. DECKER. Yes.

Mr. LYNCH. And you didn't make it, and other people did, and you do go on to say, about the process that was used, who are the individuals that we should be talking to that made these decisions not to hire veterans, or to limit the number of veterans that we are hiring?

Ms. DECKER. So, Mr. Representative, our human resources director, in conjunction with the human resources manager for staffing actually made—let me back up because I am under oath. The decision on how the practice was implemented, I can't speak to who specifically determined this was the interpretation Bonneville would take. What I can tell you—

Mr. LYNCH. Wait a minute. Wait a minute. In your testimony here that you gave to the committee, you say it was made with the consultation of a number of individuals. You said they were qualified; they made the decision right down the line. You are not going to tell me names?

Ms. DECKER. Mr. Representative, what I said was that this was in my line of authority. I was not the decision-maker. You are asking two different questions. One is who was making decisions on the performance management versus who was making decisions on the policy. So I am not sure which answer——

Mr. LYNCH. Well, give me them both. Give me one, then the next.

Ms. DECKER. Okay. The decision on the policy of the implementation of the category rating would have been made by the manager in the staffing.

Mr. LYNCH. Who is that?

Ms. DECKER. At the time—you know, I would have to go back and see who the manager was.

Mr. LYNCH. Wait a minute, wait a minute, wait a minute. You forget?

Ms. DECKER. I am not sure who the manager was of the staffing——

Mr. LYNCH. Okay, let's go to the next group, the other group that decided policy. Do you remember those names? You are under oath, now.

Ms. DECKER. Yes, decided—but what I am not sure of is in terms of the policy——

Mr. LYNCH. You have to be kidding.

Ms. DECKER.—it may have been Susan——

Mr. LYNCH. You have to be kidding.

Ms. DECKER. I will give you names. It may have been Susan Burns. At the time I believe she was the manager of the policy——

Mr. LYNCH. Is that B-Y-R-N-S or——

Ms. DECKER. B-U-R-N-S.

Mr. LYNCH. All right, who else?

Chairman ISSA. Briefly answer. The gentleman's time has expired. And I do think that, secretary, that you and the IG probably could answer this for the record very accurately.

Mr. LYNCH. We are on the record.

Chairman ISSA. No, I meant with qualified instructions within the line. I am happy to have her, to the best of her knowledge, answer your questions, but I ran an organization that was only a few hundred people, and not being sure which person—and I built the company.

Mr. LYNCH. Sir, with all due respect.

Chairman ISSA. The gentlelady may answer.

Mr. LYNCH. With all due respect, though, we spent 20 minutes up here on a dance of what was personal and what was not personal. Now we are getting down to the brass tacks of who actually did this and we want to defer the question?

Chairman ISSA. No, I am not deferring. Mr. Lynch, your time has expired. What I said was the lady——

Mr. LYNCH. Well, I am chatting with you.

Chairman ISSA. I know. The gentlelady may answer to the best of her knowledge or conjecture that it is one of a couple of people, but she is under oath. She does not have the documentation in front of her.

Mr. LYNCH. She has her memory, though. That is all I am asking her.

Chairman ISSA. And that is all we have said. But she has said she is not sure on a couple of cases.

So, Ms. Decker, you may answer those questions to the best of your knowledge today, and the committee will ask the secretary and the IG to provide such documentation so that we may verify the accuracy.

Mr. LYNCH. Okay, so can we have your answer to the question?

Ms. DECKER. I will answer the question. So I have—I will answer the question. I have 2700 people that report to me. Knowing specifically which manager, four levels down, that made a decision on implementing a policy, I am not as clear about who that specific person was, although I believe the name I gave you is accurate.

In regard to the performance management, the performance management decisions were made by first-line supervisors, not all the same supervisor, and someone who was an employee relations specialist, who is trained to work through performance management issues with their manager and different representatives of Bonneville legal counsel. They are each handled individually given the circumstances of the performance.

Mr. LYNCH. So they all, on their own, decided to go with this 95 percent level?

Ms. DECKER. No, excuse me, representative. I was referring to the individuals that have come under scrutiny or performance scrutiny are not necessarily all in the staffing organization.

Chairman ISSA. Thank you. The gentleman's time has expired.

We now go to the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you, and thank you all for being here.

Mr. Friedman, when did you first learn about the problems that we are talking about today?

Mr. FRIEDMAN. The first allegations were received in June and August of 2012.

Mr. CHAFFETZ. And are you aware of any BPA whistleblowers who contacted your office who now face adverse personnel actions?

Mr. FRIEDMAN. The answer to that is yes. Well, face or faced. There have been intervening actions that have taken place.

Mr. CHAFFETZ. Well, explain what has happened to these people.

Mr. FRIEDMAN. Well, in one case a person was escorted off the property and placed on suspension in anticipation of being relieved of his or her responsibilities.

Mr. CHAFFETZ. And you believe the reason for that was because they had contacted your office?

Mr. FRIEDMAN. I am relying upon what they told us. They felt they were being retaliated against for raising this issue either to our office or to Bonneville's management itself.

Mr. CHAFFETZ. Was there more than one person that went through this?

Mr. FRIEDMAN. Variations on the theme, yes.

Mr. CHAFFETZ. How many are we talking about?

Mr. FRIEDMAN. Well, as the chairman alluded to, it is at least five or six, and we have received additional allegations since our report was issued and we are sorting through those right now.

Mr. CHAFFETZ. What effect has this had on your investigation?

Mr. FRIEDMAN. Well, it has a chilling effect on—we don't know. We can't gage that. But, obviously, people who are concerned about

their jobs may—that is the whole point of protecting these people—they may feel that if they are going to be retaliated against for coming forward, that they will be reluctant to do so. So it is an unknown. I can't prove the unknown.

Mr. CHAFFETZ. But there is obviously a current, and that is one of the concerns, is there starts to be a current here that is a very either direct or indirect.

Mr. Poneman's comments are baffling to me, quite frankly, sir. On the one hand you talk about the great openness and transparency, the great ability for anybody to come forward. At the same time you have people who say, well, we were told not to, we were going to coordinate. In fact, in this letter of July 24th of 2013, deputy general counsel wrote to Chairman Issa: "Rather, Bonneville was informed that this is a very serious matter and that any external questions were to be coordinated with the appropriate headquarters office," as if the United States Congress was an external organization.

Mr. Friedman, doesn't that strike you as a contradiction? Doesn't that strike you that if you are going to coordinate, isn't that sort of code for you better not say anything unless headquarters approves it?

Mr. FRIEDMAN. You are asking me for an interpretation, Congressman Chaffetz, and I could interpret it one of two ways. I could interpret it either way, frankly. One is that it is a code, but I prefer the more benign interpretation, which is that in an organization you do coordinate things; that is the way things get done, things are accomplished.

Mr. CHAFFETZ. But that is contradictory to the idea that if management, if Washington, D.C. is going to take the point on answering these questions, you better let them answer these questions, rather than you as an individual feeling free to express your personal point of view and your personal experience. Is that a leap too far in your mind?

Mr. FRIEDMAN. No, I don't think that is a leap too far, no.

Mr. CHAFFETZ. These allegations—

Mr. PONEMAN. May I comment on that?

Mr. CHAFFETZ. Not yet. Not yet.

Allegations of retaliation, again, any sense of how far and wide this might be?

Mr. FRIEDMAN. Well, as I indicated earlier, I think we have five or six cases that are ripe or getting ripe, but we have had other allegations since the issuance of our report and we don't know where those stand at this point.

Mr. CHAFFETZ. Mr. Poneman, we had a very senior official there say that you did give a verbal order to acting BPA Administrator Elliott Mainzer that nobody at BPA was allowed to talk to anybody about the situation. Do you take issue with that?

Mr. PONEMAN. I have no idea what others have said. I can tell you what I said. And I have talked to Mr. Mainzer and I have been clear beyond peradventure that anybody may step forward. I said this to him verbally; he repeated it in an email to the staff. I don't think there is any ambiguity whatsoever.

Mr. CHAFFETZ. I beg to differ.

Mr. Chairman, I think as we talk to these whistleblowers, and God bless them for stepping forward and offering a perspective, it needs to be in context and with an objectivity.

I appreciate, Mr. Friedman, for your diving into this issue and we look forward to your continued experience in sorting this out. Yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman who represents a great many Federal workers, Mr. Connolly of Virginia.

Mr. CONNOLLY. Thank you, Mr. Chairman.

And welcome to the panel.

Mr. Friedman, I am puzzled by what my colleague, Mr. Chaffetz just said. I have worked in the private sector and I have worked in the public sector. I headed up a very large government locally here. It would be unthinkable in either of those enterprises that people could just Lone Ranger responses to the Hill. Whether it was written inquiries or whether it was a request to testify, you absolutely had to notify your supervisor and you absolutely had to coordinate it; otherwise, there is chaos. In the private sector company I am talking about, we had 46,000 employees, and in the public sector company I am talking about we had 36,000 employees, including school employees. One can go wrong with allowing everybody to do whatever they wanted whenever there was an inquiry here on the Hill.

That is a recipe for chaos, is it not, Mr. Friedman, as a management principle?

Mr. FRIEDMAN. I certainly see that possibility.

Mr. CONNOLLY. Thank you. So the idea that somebody might coordinate in no way, shape, or form, on its face, suggests anything other than that very word, coordination. That is a fair interpretation too, right, Mr. Friedman?

Mr. FRIEDMAN. I think it is a fair interpretation.

Mr. CONNOLLY. So the idea that putting a sinister interpretation on that word is certainly one interpretation, and Mr. Chaffetz would have us believe apparently that is the only interpretation. But I beg to differ, as somebody who has managed large enterprises and been involved in the management of large enterprises, both in the public and private sector, dealing with this very subject. Frankly, given what could go wrong with Federal employees coming before this committee, especially, I would think lack of coordination would actually be a reckless management act.

Mr. CHAFFETZ. Would the gentleman yield?

Mr. CONNOLLY. No, I will not.

Mr. Deputy Secretary Poneman, it seems, based on what we are looking at, that the Department reacted very aggressively to these allegations and took some strong message, so I was surprised to learn that Chairman Issa publicly accused you of muzzling employees and obstructing the committee's investigations. I mean, those are serious words. So I would like to give you an opportunity to respond publicly. On July 17th Chairman Issa sent you a letter that said: "Today I learned on Monday"—that would have been July 15th—"you verbally instructed Elliott Mainzer, the individual you chose to act as acting administrator of BPA, that no BPA employ-

ees were to talk with anyone regarding these allegations, including congressional investigators.”

Did you in fact, Mr. Poneman, instruct Mr. Mainzer that no BPA employees were to speak with congressional investigators?

Mr. PONEMAN. No, sir, I did not.

Mr. CONNOLLY. Have you any idea why the chairman would make such a charge when your testimony under oath here today is, flat out, you did not do such a thing?

Mr. PONEMAN. No, sir, I don’t know what information he was basing that comment on.

Mr. CONNOLLY. Can you tell us what you did tell Mr. Mainzer?

Mr. PONEMAN. Absolutely, sir. I told him that it was imperative, as I have maintained consistently in all communications, that everybody understand clearly that there can be no retaliation, no reprisal, no adverse action taken to anybody for stepping forward and expressing their concerns in any case. And, in fact, he followed up that conversation with a communication to all BPA employees to that precise effect, so I think he understood me rather clearly.

Mr. CONNOLLY. Did you ever instruct anyone to muzzle BPA or DOE employees?

Mr. PONEMAN. No, sir, I did not.

Mr. CONNOLLY. Chairman Issa next warned: “Obstructing a congressional investigation is a crime.” Now, that sounds a little bit—well, it echoes a tactic used in a previous era that is most unpleasant. And if the chairman really believes it is a crime, then presumably this committee will pursue it to the fullest. And then he, in fact, reminded you that that crime statutes have a five year prison penalty, which seems deliberately designed to intimidate you, but maybe he felt you just needed to be reminded.

The very same day, however, that Chairman Issa claims you ordered the muzzling, the Department sent its official response to the IG, explaining that you had personally directed Mr. Mainzer to instruct employees to cooperate.

Can you explain this seeming contradiction between the chairman’s conviction that a crime almost had been committed and apparently your official response directing Mr. Mainzer to in fact cooperate?

Mr. PONEMAN. Congressman, I can only speak to my own actions and there, as I said, I have been consistent that anybody in any setting, be they Federal employee or contractor employee, has to feel free to step forward and express any concerns that they may have to any properly constituted authority. So I have been quite consistent on that. It never would even occur to me to seek to be obstructing any such inquiry, frankly.

Mr. CONNOLLY. And, Mr. Chairman, just one last question to the IG.

Mr. Friedman, is there anything in your findings or your investigation that would contradict anything Mr. Poneman just said to this committee under oath?

Mr. FRIEDMAN. We have no allegation, if that is what you mean, Mr. Connolly, that Mr. Poneman has muzzled anyone.

Mr. CONNOLLY. Do you have any information, did anyone come forward from DOE or BPA to suggest to you that they had been

intimidated or coerced or discouraged from cooperating with this committee in any way? Do you have any evidence of that as the IG?

Mr. FRIEDMAN. Not from Mr. Poneman, with regard to Mr. Poneman.

Mr. CONNOLLY. Thank you.

Thank you, Mr. Chairman.

Mr. JORDAN. [Presiding.] Thank you.

Mr. Poneman, you are deputy secretary, you are the number two guy at the Department of Energy, is that correct?

Mr. PONEMAN. Yes, Mr. Chairman.

Mr. JORDAN. And you have been there since 2009?

Mr. PONEMAN. Yes, sir.

Mr. JORDAN. And you head up the Credit Review Board, is that accurate?

Mr. PONEMAN. Yes, sir.

Mr. JORDAN. So you were on the Credit Review Board when decisions were made regarding giving taxpayer money to Solyndra, is that correct?

Mr. PONEMAN. Actually, the original Solyndra decision, sir, occurred before I arrived.

Mr. JORDAN. Were you part of any discussions about the taxpayer money that was given to Solyndra? Were you on the Credit Review Board when some of that was discussed, yes or no?

Mr. PONEMAN. The subsequent issue that came up later, when the loan was in trouble, was when I was at the Credit Review Board.

Mr. JORDAN. And what is the status of Solyndra today? Isn't it true that Solyndra is bankrupt?

Mr. PONEMAN. I believe it is bankrupt, sir.

Mr. JORDAN. Okay. So were you on the Credit Review Board when Abound Solar was given taxpayer dollars as well, and a loan guaranty?

Mr. PONEMAN. Abound was during our tenure, yes, sir.

Mr. JORDAN. And isn't it true that Abound Solar is bankrupt today, as well?

Mr. PONEMAN. I believe that to be the case.

Mr. JORDAN. Okay. And were you on the Credit Review Board when Beacon Power was given a loan guaranty?

Mr. PONEMAN. Yes, sir. I would note that there are——

Mr. JORDAN. And isn't it true that Beacon Power is bankrupt today?

Mr. PONEMAN. Yes, sir. And I would also note we have the largest wind farm in the world; we have the largest photovoltaic farm in the world.

Mr. JORDAN. I am asking the questions here. And you were on the Credit Review Board when the decision was made to give Fisker a loan guaranty, isn't that true?

Mr. PONEMAN. Yes, sir.

Mr. JORDAN. All right.

Mr. PONEMAN. And I was also there when Tesla repaid their loan early, sir.

Mr. JORDAN. I got that. Maybe we will get to that. I have a series of questions.

And isn't it true that Fisker is in serious financial difficulty, failed to meet the milestones established by the company?

Mr. PONEMAN. Sir, I am not prepared to address the Fisker matter today.

Mr. JORDAN. Well, we had a hearing and they are in big trouble.

And isn't it true that you were on the Credit Review Board when Nevada Geothermal was given taxpayer money?

Mr. PONEMAN. I would have to look at the record, sir.

Mr. JORDAN. Yes, we think it was. And isn't it true, Mr. Poneman, that you were on the Credit Review Board when Solar Power was given taxpayer money, as well?

Mr. PONEMAN. I would have to look, sir.

Mr. JORDAN. And isn't it true, Mr. Poneman, that almost \$15 billion of taxpayer money in the loan guaranty program was given to 26 different projects? Is that accurate, \$14.5 billion, 26 projects?

Mr. PONEMAN. Sir, we have deployed billions and we have leveraged more, and we have to show for that large wind farms, large solar farms, and a very, very small default rate, sir.

Mr. JORDAN. And isn't it true, Mr. Poneman, that 22 of those 26 projects had a credit rating of BB-, commonly referred to as junk status?

Mr. PONEMAN. Sir, I would have to look at—

Mr. JORDAN. Well, we have looked at the emails from Department of Energy and we have looked at the facts, and that is in fact the case. And now we find out, and now we find out, as I look at this flowchart, where it says you are number two, or this chain of command, that you were also the one directly responsible for Bonneville Power Administration. The line goes directly up to you. And we find out that this agency or this Bonneville Power was discriminating against veterans. We find out from Chairman Hastings that the Department has been uncooperative was the term he used in inquiry he has made. The chairman has said you have not been responsive. And then we also find out from Mr. Friedman that there is retaliation going on at Bonneville Power. All this is causing me concern about what is going on in the Department of Energy.

Mr. PONEMAN. Sir, we always seek to be responsive. We provide thousands and thousands of documents. We have consumed less than 10 percent of the loan loss reserve set aside, which I think is not a bad record, even the private sector. We are always responsive—

Mr. JORDAN. How many more billions of dollars do you plan of loaning out of taxpayer money to other projects over the course of this next year, Mr. Poneman, do you have any idea?

Mr. PONEMAN. We will have to see how many—

Mr. JORDAN. Do you think your track record is going to get better? Are some of these loans you are going to give to these projects going to be better than BB-rated companies?

Mr. PONEMAN. Sir, the portfolio is healthy; it has been looked at, it is being managed actively—

Mr. JORDAN. Three companies bankrupt, four on the verge of bankruptcy, and you call that healthy? That is seven out of 26.

Mr. PONEMAN. Sir, we have consumed less than 10 percent of the loan loss reserve. The default rate is very minor.

Mr. JORDAN. Seven out of 26, 22 out of 26 BB-rating.

Let me just put up one other thing. I want to ask you this question. This is an email that we received and we will make it available to everyone. This talks about you were recused from decisions regarding Fisker. Tell me why you had to be recused. Because you told me that you were on the Credit Review Board when decisions were made about Fisker, but this says you were recused from that. Why were you recused? Tell me the circumstances around that.

Mr. PONEMAN. Sir, in 2008 there was a presidential election coming up. I had begun to make some inquiries as to whether I might need post-Government employment engagement. So when you have engagement with entities, you file recusals, and that is what I did.

Mr. JORDAN. What was the entity that caused you to—were you talking with Fisker directly?

Mr. PONEMAN. No, no, no, of course not, sir.

Mr. JORDAN. Okay, so I am still not clear. Deputy secretary is recused from Citibank. Citibank is involved in several loan guaranty deals and they list Fisker there. So you were recused because of your involvement with Citibank?

Mr. PONEMAN. I beg your pardon, sir?

Mr. JORDAN. You had to recuse yourself from discussions about Fisker because of your involvement with Citibank?

Mr. PONEMAN. I had a conversation with Citibank, which led me to recuse myself from anything that—

Mr. JORDAN. When did the conversation with Citibank take place?

Mr. PONEMAN. I can't recall the exact date; I would have to come back to you. This is a hearing on a different topic and I had not prepared for this.

Mr. JORDAN. Well, let me put up another slide, because I just want to ask you, then, because I am curious, because we have the minutes from the April 11, 2012 meeting, and as we go through the minutes there are several questions. The next project for review was Fisker Automotive. The deputy secretary asked if any of these problems related to issues of A123 battery. The deputy secretary asked the company was it—the deputy secretary asked this; the deputy secretary—so you were critically involved in discussions about whether taxpayer money was going to go to Fisker, which we know was on the verge of bankruptcy, and yet we also have the email saying you were supposed to be recused from any discussions about Fisker. So what I want to know is—

Mr. CUMMINGS. Mr. Chairman?

Mr. JORDAN.—I want to know the timing of—

Mr. CUMMINGS. Mr. Chairman? Would the chairman yield?

Mr. JORDAN. I would be happy to yield.

Mr. CUMMINGS. Just very briefly. You know, I have tried to sit here and listen to this line of questioning that has nothing to do with this hearing, and Chairman Issa and I have—

Mr. JORDAN. I think it goes to the—if I could, to the ranking member, I think it goes to the performance of the Department of Energy as a whole and, obviously, when you are discriminating against veterans and you have to recuse yourself from taxpayer money given to organizations, I think it all is applicable.

Mr. CUMMINGS. I think that the other thing that I am concerned about is you are asking Mr. Poneman some questions and I want

him to be frank and honest, but at the same time he didn't come prepared, I don't think, to answer these questions, as you can see, over and over again. But I just think that we ought to try to stay within the limits of the hearing. That is what this subject is. I tell my members on this side to maintain some type of order. We can go over a whole landscape of things and not really get to the bottom line here, but again I reluctantly even mention this, because I do believe in a certain amount of latitude, but at some point it just gets out of line.

Mr. JORDAN. I appreciate the ranking member's comments. I would just say that Mr. Poneman is the deputy secretary, basically runs the Department of Energy, is the number two guy there. I asked him a question early on in my five minutes about his involvement with the Credit Review Board and Fisker; he said he was involved with that decision. Then further asked him why he had to be recused subsequently from decisions regarding Fisker and highlighted what we have in the emails. We would be happy to let Mr. Poneman get back to us with an answer, but you would think the number two guy at the Department of Energy would know what he did relative—he was just bragging about what a great program this is. You would think he would know, with respect to Fisker, when he had to be recused and why he is in the minutes from the meeting where they were deciding to give taxpayer money to Fisker, a now bankrupt company. You would think he could give some of those answers to us.

Mr. PONEMAN. Sir? Sir?

Mr. JORDAN. Yes. The gentleman can respond.

Mr. PONEMAN. With due respect, sir, I did not act on Fisker at any time after which I was recused, period. Thank you.

Mr. JORDAN. I am asking when were you recused. That is what I want to know. When was the date?

Mr. PONEMAN. We will provide you the date, sir. I did not come prepared for this line of questioning.

Mr. JORDAN. Okay.

The gentleman from Michigan is recognized.

Mr. WALBERG. I thank the gentleman.

Just to make sure I have an understanding, Mr. Friedman, are you aware of any BPA whistleblowers who contacted your office who now face adverse personnel actions?

Mr. FRIEDMAN. I am not trying to put too fine a point on my answer, Congressman, but they faced, past tense, potential action, yes.

Mr. WALBERG. What adverse actions did they face?

Mr. FRIEDMAN. Possible suspension.

Mr. WALBERG. What effect does whistleblower retaliation have on IG investigations?

Mr. FRIEDMAN. It has a potential chilling effect on our ability to get people to be forthcoming, candid, and cough up information that is essential to our work.

Mr. WALBERG. So do you feel that the threat of retaliation by BPA prevented other whistleblowers from coming forward, as well as having a chilling effect on these whistleblowers?

Mr. FRIEDMAN. I can't—to paraphrase a former secretary of defense, I don't know what I don't know, and I can't be sure there were people who——

Mr. WALBERG. Your best professional opinion.

Mr. FRIEDMAN. My best professional opinion is it put a chilling effect on the work that we do. But the original whistleblowers, if I may, were people who brought the problem with regard to veterans' preference to the attention of Bonneville's management, and then there were others who brought it to our attention as well.

Mr. WALBERG. Okay. Well, thank you.

Let me go from there to Ms. Decker. At what time did you become aware of retaliatory adverse personnel actions?

Ms. DECKER. So, Mr. Representative, I am not aware of retaliatory adverse actions.

Mr. WALBERG. None?

Ms. DECKER. No.

Mr. WALBERG. Then what role did you play in the disciplinary process?

Ms. DECKER. In the adverse actions that are in question? There are adverse actions at play. I would submit they are not retaliatory. I am not a decision-maker in those, but the role that I played when they came to my attention——

Mr. WALBERG. Yes, that is what I am asking, the role you played.

Ms. DECKER. The role that I played when they came to my attention was to understand had there been consideration of the whistleblower impact and had there been consideration for the due process of managing performance. The answer I got, the response I got from our legal counsel was that, yes, those things had been weighed, and, yes, there are risks, but that it did not preclude proceeding with the adverse action in terms of performance accountability.

Mr. WALBERG. What specific role did other BPA employees play in the disciplinary process that you have described here?

Ms. DECKER. Representative, as I started to say earlier, the individuals in question have a supervisor. The supervisor is best equipped to determine the performance of an individual. So the supervisor was involved in terms of the individual's performance. Beyond the supervisor at Bonneville, our practice is to have someone from legal counsel and to have an employee specialist work with the manager. In part, that is ensure that there is not retaliatory actions, that legal counsel and the employee relations specialist are watching for that as someone goes on to performance action.

Mr. WALBERG. So you personally took no actions in relationship to allegations about retaliatory actions or discipline?

Ms. DECKER. What I did——

Mr. WALBERG. Is that a correct understanding?

Ms. DECKER. No. That would be depending on how you look at that. So what I did do—my responsibility was to ensure that we actually are following the processes that protect employees and protect the agency. I did that. Again, I want to underscore there was a first-line supervisor, a manager, a director, another executive vice president before it got to me.

Mr. WALBERG. Do you think the actions were fair, ultimately?

Ms. DECKER. Ultimately, I believe in the process that we use and, yes, I believe that they are fair.

Mr. WALBERG. Let me go further here. Randy Hardy, former BPA administrator, recently stated that the BPA employees claiming retaliation are "poor performers who claim to be whistleblowers." He further stated that is a frequent problem with whistleblower laws. Do you agree with Mr. Hardy's statement that the whistleblowers are poor performers trying to insulate themselves from disciplinary action?

Ms. DECKER. Representative, let me say this in terms of Mr. Hardy's comment. In this case, I don't know the facts to know whether that is true in this case. I think there is appropriate whistleblowing. I think that is an important function that is played by anyone who brings something forward. The issue of someone's performance is oft-times a separate issue, and I would not categorically say that someone who is whistle-blowing is doing it to protect themselves from performance. But I also know that management cannot turn a blind eye to performance because someone has a protected status. And there is a chilling effect upon managers, as well, if their view is they cannot take any action.

Mr. WALBERG. But Mr. Hardy went on to say that he thought that was exactly what was at work here, in this instance, and that is a concern. And that is not general statement, that is specific to this issue.

Ms. DECKER. And that is Mr. Hardy's opinion.

Mr. WALBERG. Is that your opinion?

Ms. DECKER. No, that is not my opinion.

Mr. WALBERG. Thank you.

Thank the chairman.

Mr. BENTIVOLIO. [Presiding]. Now going to the gentleman from Indiana, Mr. Lankford. Excuse me, Oklahoma

Mr. LANKFORD. I will take it. Indiana is a great State as well. But if I have the option, I will take Oklahoma, just personally, for me.

Two questions here. Ms. Decker first. You had mentioned before, in your oral testimony, that a mistake was made a year ago and that mistake is being fixed. Can you clarify what you mean by the mistake?

Ms. DECKER. So Bonneville did implement the category rating process incorrectly, as Mr. Friedman articulated. That was a mistake. In terms of fixed, I would not call that it is fixed; I would say that improper application of category ratings has stopped. What is not fixed is the reconstruction of those jobs during that time period that impacted veterans. We have not fixed that yet. So we stopped the erroneous practice, and we stopped it because we also saw that it was incorrect. If we didn't think it was incorrect, we would still be doing it, and the fact of the matter is we stopped back in May 2012.

Mr. LANKFORD. Okay, thank you.

Mr. Poneman, let me ask a little bit about just direction for all the PMAs. While Bonneville is the one, obviously, we are addressing on this now, is there an emphasis right now between DOE to say, okay, we need greater oversight over all of these different entities at this point? Is there more of a regional focused decision-mak-

ing? Where do you think the trend is going right now as far as how decisions are made, whether it be personnel or function or direction?

Mr. PONEMAN. I don't think there is a trend, Congressman. As you note, all the power marketing administrations fall under the authority of the Department of Energy, they are part of the Department; they have various different legal authorities and various and different traditions. We seek to have good cooperative, coordinated relations with all of them, and I think to a large measure we do.

Mr. LANKFORD. Secretary Chew had written a memo back in March of 2012 that talks about just increasing—to work on incentivizing energy-efficiency programs, integration of variable resources, preparation for electric vehicle deployment, and such. Are you familiar with that memo?

Mr. PONEMAN. I do recall it, sir.

Mr. LANKFORD. Just the preparation and the direction that it needs to go on it. A general question on this, and it is a difficult one because multiple administrations, both Republican and Democrat, for the last 30-plus years have considered the PMAs, and Bonneville specifically, as an entity that should be privatized, that should be sold, and allow the power to go back to the market as it does to other areas. What is the consideration? While the consideration is happening at DOE about functioning with how we need to direct the different PMAs, is there also conversation about is this something that should be on the market like other power distribution is?

Mr. PONEMAN. Sir, the conversations I have had about the power market administrations, as far as I can recall, have not touched on privatization, per se. I would note that when there was so much concern generated by that memorandum, that we took account of that and we had a whole, as I think you know, because they included your region, a whole series of working groups, and I think it turned out to be a very healthy exercise to bring a lot of perspectives to bear and a so-called JOT program that I think ended up providing a lot of very useful information and a lot of good feedback with good policy direction rolling forward for the PMAs.

Mr. LANKFORD. What happens if, in the days ahead, this Congress were to look at it and say, okay, let's do an experiment, let's pilot, let's find one of these areas and be able to sell it, and to be able to have the power that is generated for that area on the private market, as it does in others? And I am very aware of all the parochial concerns that immediately folks from that area panic and say we won't have electricity in our homes because it will be on the private market, and all that kind of stuff, as it in multiple other areas. There are terrific assets that are there, but it is also a liability to us, the line of credit, and it has a history over the past 30 years of sometimes making money and sometimes being a stretch on the Federal budget. So the question becomes what would it take and are there considerations about selling any of these assets.

Mr. PONEMAN. Sir, I am not aware of any conversations of that character. We are, right now, of course, most directed by the statutory bases of all four PMAs, which are different. The thing that we are very focused on is they generally require us to provide the least

power available to the preference customer, and so forth, and I am aware that there has been a lot of interest in the ability that that has had in generating economic growth in the region served by the PMAs.

Mr. LANKFORD. Great. This is not just a Republican issue; Democrat administrations have brought this same issue up, as well, over the years, to say there should be a serious consideration to be able to look at not only for budget realities, but just for fairness for the community that is there and for the Federal taxpayer nationwide to look at it. So what I am interested in is are there conversations like that that have happened in DOE.

Mr. PONEMAN. Not that I have been party to or aware of, sir.

Mr. LANKFORD. Okay. Thank you.

I yield back.

Chairman ISSA. [Presiding.] I thank the gentleman.

We now go to the gentleman from Michigan, just north of Indiana.

Mr. BENTIVOLIO. Thank you, Mr. Chairman, and I apologize; I did know he was from Oklahoma.

Getting back to veterans and hiring preferences, I think I have a unique clarity because I am a Vietnam veteran, as well as Iraq, and I remember coming home from Vietnam and applying for work, and my fellow veterans were telling me don't put Vietnam veteran on your resume, you will never get hired. So I think I have a unique clarity.

And what was really upsetting to me when I read this, it said that one of your middle managers, he or she would never again hire a Vietnam veteran. That was a comment made by the report from a whistleblower after they heard this from a middle manager.

Have you ever served in the service, Mr. Poneman? How do you pronounce that?

Mr. PONEMAN. It is Poneman, sir.

Mr. BENTIVOLIO. Poneman. Thank you.

Mr. PONEMAN. My father was a World War II veteran, but I, sir, have not served, but I strongly honor all service and honor you for yours.

Mr. BENTIVOLIO. Thank you very much. But, you know, I hear that a lot too, thank you for your service, now get lost.

Mr. PONEMAN. And, sir, this is precisely why we are as forceful as we are in ensuring that the veterans' preferences, which are codified in law, are fully and faithfully executed.

Mr. BENTIVOLIO. Did you ever talk to your father about his experience in World War II?

Mr. PONEMAN. I absolutely did, many times. We lost him many years ago, sir, but he served in Burma, he served in China, and he was in the Signal Corps, and it was a formative experience for him. And, by the way, he benefitted from the GI bill and got some college education efforts, so we had a strong tie on that.

Mr. BENTIVOLIO. As did I. And thank you for his service.

Mr. PONEMAN. Thank you, sir.

Mr. BENTIVOLIO. A lot of veterans tell me that when they come home it is kind of like watching a movie, it is a 3-D movie. Everything is live around them, but because they, I guess, experience something uniquely different than everybody else, it was like

watching a movie; they weren't really actually part of what they were watching because there was this difference.

But the whistleblowers, Mr. Friedman, any of those whistleblowers veterans?

Mr. FRIEDMAN. I don't know.

Mr. BENTIVOLIO. Did you ask? You had about five or six, right, and others?

Mr. FRIEDMAN. That is an interesting question. I don't believe we have posed that question.

Mr. BENTIVOLIO. Okay. Very good. Just a few more questions.

You had 146 cases of applications or people you were hiring. Was that the extent? And what was the period? Two questions. What was the period of hiring that we are discussing and how many openings for jobs were there?

Mr. FRIEDMAN. Well, as I indicated, those are our preliminary numbers. It covers a period of 2010, November 2010 to 2012, April or May of 2012.

Mr. BENTIVOLIO. Okay. So out of 146 cases, you said how many hired were actual veterans?

Mr. FRIEDMAN. I don't know how many hired were actual veterans. What I have said is in two-thirds of the cases the veterans were—there were prohibited personnel practices in which veterans were disadvantaged.

Mr. BENTIVOLIO. Did anybody tell you why, other than this comment I hear that they bound with each other too quickly and undermine management? I don't understand how that—

Mr. FRIEDMAN. Well, in terms of the actions that were taken by Bonneville, what we were told by the hiring officials and the program officials is they wanted to reduce the size of the pool they had to deal with for selection purposes.

Mr. BENTIVOLIO. Why do you think that is? I have a real hard time with that because—well, go ahead, answer.

Mr. FRIEDMAN. Well, I have a hard time with it, too. That is why we are doing what we are doing.

Mr. BENTIVOLIO. Yes, I understand. So, let's see, I had one other question. I can't remember what it is, so I will yield back.

Chairman ISSA. Will the gentleman yield?

Mr. BENTIVOLIO. Yes.

Chairman ISSA. Mr. Friedman, I would ask that you give the committee the effective numbers, do the analysis based on the known pool of how many veterans would have been in the pool had it been at 90 percent and how many were in the pool each time at a different number. I think both the ranking member and I—I will let him have the rest of the time—would like to know the effect of this change, even if we don't know the intent.

Mr. FRIEDMAN. Mr. Chairman, let me totally candid with you. That question cannot be answered with any precision until all the files have been reconstructed, and that is going to take—that is not something that I can do; something that Bonneville is going to be doing and the Department is going to be doing. It is going to take months before that is done.

Chairman ISSA. I appreciate it. We will be patient and we will take partial reports as they become available.

Mr. Cummings?

Mr. CUMMINGS. Thank you, Mr. Chairman. Just one quick question.

How do we correct this? In other words, we talk about correction. Discrimination is a buggerbear. It is criminal. Because basically what you have done is deprived these veterans of opportunities, and it just doesn't affect them; it affects their families and generations probably yet unborn. I haven't even gotten into the frustration piece.

Mr. IG, Mr. Friedman, if you were to find these violations, will they go into any kind of corrective action?

But thank you very much, I appreciate it, Mr. Chairman.

Mr. FRIEDMAN. Well, Mr. Cummings, if, at the end of the day, this pans out the way it is headed right now, and it is going to take some time, we are going to have, hopefully, recommendations that will get to the root causes of the problem, at least the proximate causes of the problems at Bonneville. We are hoping that there will be lessons learned. Frankly, this whole exercise will have been for naught if there aren't lessons learned that can be applied certainly throughout the Department of Energy, and perhaps beyond, and that is our hope.

Part of this, though, is a question of judgment and, Mr. Cummings, I don't know that you can regulate judgment or legislate judgment. People here knew there was a problem and didn't correct it at the source, and that is a judgment call, and I am not sure how you correct that, to be honest with you. It is frustrating.

Chairman ISSA. Thank you. We look forward to finding out how we do that with the secretary.

Mr. Poneman?

Mr. PONEMAN. I would just like to add to that. We will certainly benefit from whatever the IG finds, but our responsibilities are not abated while he is doing his work. And I just want to assure the chairman and the ranking member that we have sent out, and we continue to send out, support. We have people actually on the ground now instructing on how to execute these laws and responsibilities appropriately so that the veterans' preferences are fully respected. We are not awaiting the outcome of any investigation to make sure we try to get at the actual practices themselves and correct them so that these problems don't recur and we fix them where they have occurred.

Chairman ISSA. Well, we appreciate that. I think what the ranking member and I are both getting to is you have a pool of people who may have gone on to other jobs, may have done other things, and may not even be interested in these positions at this time. But until you essentially stop hiring anyone else, look and find these people and offer them a job, you won't at least have corrected the portion that is still within correcting.

Mr. PONEMAN. And we are on that, Mr. Chairman. We are working that issue.

Mr. CUMMINGS. Mr. Chairman, I am so glad you said what you just said, because you are right. These are people who lost out on an opportunity and they probably can identify them. And I am so glad you said that because it is just one of the ways, at least, for people who, if we find out that they definitely were discriminated against, they might at least have an opportunity to be brought

back into a pool which they should have been in from the very beginning. So I do appreciate that, Mr. Chairman, and I would hope that we would follow up on that.

Chairman ISSA. Ms. Decker?

Ms. DECKER. Mr. Chairman and Mr. Representative, if I could comment on that. There is a process to reconstruct, and that is what we need to get after. I think that is Bonneville's hope, to get that done, and it is DOE's. I think that is one place I can say there is agreement that that reconstruction process needs to take place. And, yes, we can identify the pool of folks that have been impacted.

Chairman ISSA. Okay, we are going to go to Mr. Gowdy, who has been patiently waiting, but affirmative action must be done quickly to have any real effect on the lives that have been disrupted as a result of wrongdoing. The ranking member said generations unborn. We don't want to wait for the generation unborn to be offered a job at Bonneville.

Ms. DECKER. I hear you.

Chairman ISSA. Or at some other equivalent place, which is within the Department of Energy's ability. You have a very large pool. If you had that entire list, you could offer them an equal or greater. You could go a long way toward a corrective action. And we are talking affirmative action here. We are talking about a group that has been discriminated against. They deserve to be recognized quickly and corrective action separate from accountability, and I think that is what the ranking member and I are so dedicated to and why we are really having this hearing today.

The gentleman from South Carolina, Mr. Gowdy. Thank you for your patience.

Mr. GOWDY. Thank you, Mr. Chairman, and I apologize to you and my fellow committee members, Mr. Chairman. I was in the back meeting with two constituents, so if I ask questions that have already been asked, forgive me. It probably won't hurt the witnesses to answer them more than once, so I will proceed on.

What evidence, Mr. Inspector General, do you have, if any, of an intent to discriminate? Not a discriminatory effect, but an intent.

Mr. FRIEDMAN. Mr. Gowdy, I want to answer your question as directly and honestly as I can.

Mr. GOWDY. I am sure you will.

Mr. FRIEDMAN. There are two pieces here. One is the piece we have talked about this morning, which is adjusting the cut line in this system. We have no indication at this point that it was an intentional, wilful attempt to discriminate against people who were entitled to veterans' preferences. There are other issues that we are looking at associated with the review that we currently have ongoing which may cross into that boundary. I have no idea where we are headed. I think you have a prosecutorial background. We are following the facts where they take us; we just don't know where it will be.

Mr. GOWDY. And that is exactly what I want you to do. So you have concluded that there was a discriminatory effect, and now you are trying to adduce whether or not there was discriminatory intent.

Mr. FRIEDMAN. No. What I am saying is there are at least multiple pieces to this inspection that we have ongoing. One piece

deals with the inappropriate adjustment of the best qualified pool which resulted in applicants, including veterans, being discriminated against.

Mr. GOWDY. That is the effect.

Mr. FRIEDMAN. We have no indication right now that it was done willfully and intentionally in terms of affecting veterans and those with veterans' preference.

Separate and apart from that, although part of the rubric under which this whole investigation, this whole inspection is undergoing, are certain additional instances which may cross the boundary that you have described.

Mr. GOWDY. When was BPA first put on notice that the practices were unlawful or discriminatory, regardless of intent?

Mr. FRIEDMAN. In May or June of 2012.

Mr. GOWDY. What remedial steps were taken and with what timeliness?

Mr. FRIEDMAN. We are told that the process at that point, they stopped the process of adjusting the lower boundary for the best qualified list.

Mr. GOWDY. Contemporaneous with you bringing it to their attention?

Mr. FRIEDMAN. They received it from their own folks as well, individuals in the human management program at Bonneville.

Mr. GOWDY. Ms. Decker?

Mr. FRIEDMAN. However, Mr. Gowdy, an important point. This is a two-part process. One is stopping the activity; the second part, which Ms. Decker referred to and we refer to in our report, which is, in a sense, as important, is that there are remedial actions that need to be taken to address those who have been negatively impacted. You must notify them—

Mr. GOWDY. Those are definitely two of the parts. I am primarily interested in how we got to those two parts.

Mr. FRIEDMAN. Okay.

Mr. GOWDY. And I can start with Ms. Decker. I am interested for the motive. What motive exists to have a discriminatory practice that adversely impacts veterans, whether it was intentional or not? What is the motive?

Ms. DECKER. Representative Gowdy, as I understand it, there was no motive to discriminate. There was a motive that was inaccurately applying the category rating.

Mr. GOWDY. So you are just telling me it was simply negligence that adversely impacted this discreet group, but there was no intent to single out that group?

Ms. DECKER. Absolutely not.

Mr. GOWDY. And what evidence do you have to support that?

Ms. DECKER. The evidence I have to support that is that it impacted both veterans and non-veterans. There were jobs where there were no veteran candidates, and yet the category was altered.

Mr. GOWDY. Who made the decision to adjust the parameters that led to this?

Ms. DECKER. They were made in our staffing organization.

Mr. GOWDY. Who was the boss? Who was the head of all of them? Who is the final decision-maker?

Ms. DECKER. So the director of the human resources organization at that point was a gentleman named Roy Fox, and he had a staffing manager. I do not know where the final decision on how the application occurred was made.

Mr. GOWDY. I guess what I am trying to get at is somebody did some adjusting. They had to have a reason for doing it. They didn't read a horoscope that morning and decide to do it; they had to have a reason to do it. What is the reason?

Ms. DECKER. As I understand it, and this may not be a full answer, as I understand it, the way they interpreted the regulations, so their interpretation was faulty. They believed that there could be a modification of the category after it was initially set in the hiring process. That was inaccurate. You cannot move the category. I don't know the specific motive of the staffing manager to make that a policy call.

Mr. GOWDY. Mr. Chairman, I am out of time. I have one more question. I will pose it and the chairman can decide whether or not he would like it to be answered or not.

I understand, Mr. Chairman, that in January of 2012 DOE gave BPA an award for hiring veterans. I am trying to figure out how in the hell you can have a discriminatory practice, intentional or otherwise, single out the people who bring it to the authority's attention, the whistleblowers, and then qualify for a DOE best practices award. I am having a tough time reconciling all three of those. But I am also out of time.

Chairman ISSA. Well, if someone can justify that or explain it, I would appreciate it. Ms. Decker?

Ms. DECKER. So there is a fine point that I would like to underscore.

Chairman ISSA. Sure. We want the record to be complete.

Ms. DECKER. Okay.

Representative Gowdy, you asked a question of Mr. Friedman whether the stopping of the practice at Bonneville was a result of the IG. The stopping of the practice at Bonneville was a result of staff talking to management and saying that they were concerned about it, and that stopped the process. It was not—

Mr. GOWDY. Well, I am out of time, but if I weren't out of time, I would ask you how long did that take. I mean, was it stopped the hour that you learned of the practice, the minute of it, the week, the month?

Ms. DECKER. It was stopped within two days.

Mr. GOWDY. Okay. Well, then that leads to whether or not you discovered it as timely as you should have.

Ms. DECKER. We did not discover it as timely as we should have.

Mr. GOWDY. Okay. Well, look, I am not adverse to giving credit where credit is due, but I can't give you credit for that fact pattern. And I still haven't heard an answer how you qualify for a best practices award.

Mr. PONEMAN. I would—

Chairman ISSA. This will be the final, final answer.

Mr. PONEMAN. Yes. I don't mean to delay the committee.

Chairman ISSA. No. Please go ahead, secretary.

Mr. PONEMAN. This, as I said at the outset, congressman, perhaps when you were not here, this is a storied and very distin-

guished organization with a great history, and they have done a lot of great things in a lot of great areas, and right across the board. That doesn't obviate our responsibility to make sure that in all cases the law is applied fairly consistently and accurately. So it is certainly possible that things can be happening in one part of the organization that are fine and good, and there are things happening that are not fine and good. The fact that something is going well in one place does not, obviously, alleviate us of our obligation to respect veterans' preferences and so forth. So that would be all I would have to offer. I don't know the specific details of the award that you mentioned, but in the question being how that can happen, that is how it can happen, because we acknowledge all aspects of performance; the good, the bad, and everything in between.

Chairman ISSA. Thank you.

Mr. Cummings, I am not going to do a second round, but do you want to say anything in closing, or any final questions?

Mr. CUMMINGS. I want to thank all of you for being here. One of the things that I am hoping is that we address this issue and it is addressed in a way that helps those who have been left out. The chairman said something that I just want to make sure that we are clear on. When I said that discrimination might affect generations yet unborn, I want to first of all say that I agree with him that I don't want to wait for generations. That is not what I was trying to say. And he is absolutely right, justice delayed is justice denied, and if we can find remedies quickly and get people back and give them a chance that they should have had, we need to do that as fast as possible.

But what I was saying was I have lived long enough now and seen enough to see when, say, that female is deprived of an opportunity she should have gotten, then she can't do for her children and, to me, that is criminal. So that generation of children then don't benefit. And I have seen it with African-Americans deprived over and over again, and then they die not getting the opportunities they deserve. To me, that is criminal because you basically have shut off opportunities for them in the future, and for their children. And that is the point that I was trying to make.

But I have to ask this one question. When Ms. Decker was testifying just a moment ago in regard to Mr. Gowdy's questions, Mr. Friedman, you kind of looked like you were in total disagreement. Could you comment, please? I can't help but watch you. And then that is my last question. Thank you.

Mr. FRIEDMAN. Mr. Cummings, I wish I could answer your question. I don't know what my reaction may have been, what comment—

Mr. CUMMINGS. Was there something that she said that you disagreed with? Just now.

Mr. FRIEDMAN. I really don't believe there was, Mr. Cummings. I am sorry.

Mr. CUMMINGS. All right, thank you.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

I am going to close with just a couple quick points.

Mr. Secretary, I know that within the Federal Government, Ms. Decker is not the only person who is on administrative leave, find-

ing themselves being paid, but without a job. I can't speak for the Government. I have only spent my military time and then my time here with the Government. But this practice under your watch, as essentially the chief operational office at Department of Energy, this practice of not finding a way to either begin direct disciplinary action or find some way to get some modicum of benefit from somebody who is in the Senior Executive Service who is highly paid. Now, I know that sometimes people say, well, if you take me off administrative leave and don't give an equal level job, that in fact I am being punished, but I will tell you I would rather this committee have to look at whether people are finding the highest and best use for somebody that for some reason cannot return to their exact position, I would rather have that than have somebody who simply is being paid not to come to work. That is somebody, a private citizen, and I am now speaking as a taxpayer, that I think you can do better. Or Ms. Decker can be told why she is on administrative leave and action could be begun. And that is part of what we will be voting on the House floor today. So that is not an order, it is just something from a citizen who pays a not insignificant amount of taxes.

I am going to close. Mr. Connolly, while I was consulting over there, went into one of his statements, and for some reason every time I say something it seems like I get referred to as tail-gunner Joe McCarthy. But I want to make sure I make the record straight, because we didn't get into specifics, Mr. Secretary, because we just wanted to make the record clear that you will take the action to ensure that the committee gets cooperation throughout any of our investigations. But I want to make the record clear. A high ranking official said no one at BPA was to speak about this outside of BPA and DOE, and that that person alleged that it came from Mainzer, your appointee, acting, and that he got it from you. So specifically following up on that, we talked to the acting director there and he said: "I personally have no problem sharing information with you." This was to my committee staff. "But I don't feel like I have the elbow room outside my chain of command to talk to you right now." Now, that is your personally appointed acting.

We are not accusing you of deliberately obstructing our investigation, and I tried to be very clear. But your way of expressing coordination and so on may have very well been interpreted by your key lieutenant at Bonneville Power, similar to the statement he made directly to us, and that translates to people saying, well, you know, we kind of have to get permission to talk. That is all I was saying. I am not backing off. If anything, I didn't plan on making the specifics of these people public. But if somebody down the dais wants to say that somehow I am making accusations, it isn't. My staff and Mr. Cummings' staff often call directly to people we think we should work with, sometimes because of something we are hearing from the IG. And this is not the first time this ever happened and this is not the first administration that it happened under. But I brought it to your attention because I would like to know that you can take the corrective action in how you speak to your lieutenants so that they would feel that they have the elbow room. Of course you want to be notified. That is fine. But we want them to be able to speak candidly.

Mr. PONEMAN. Thank you, Mr. Chairman, for raising this. This is, in fact, a very important issue that you raise, and it is important to remember first principles. The first principles is that not only do we accept, but we welcome the oversight of this committee. It is part of the process that keeps our whole system of government healthy, point one.

Point two, we always endeavor, sir, and I think we have a good record and we always, as I say, we require that we improve our performance by our own metrics, to be cooperative. One of the things I have found, sir, in all candor, is that in the jobs that we have, the first thing that happens, it is like a kid's game of telephone, you say one thing and it becomes, frankly, wildly distorted. So all I can do, and I am doing it under oath and I have done it in private and I will do it in public, is to be very, very clear. There is no tolerance for reprisal for anybody communicating freely with all constituted authorities, including this committee. That has been the instruction. That will be the instruction.

And at the same time it is also very important, with a large organization, that we communicate clearly and authoritatively what our policies are, and we can't have, obviously, 110,000 policies; we have to have one policy. So I will be very mindful of making sure that people understand that coordinating a policy position has nothing to do whatsoever with the fact that every individual, be they contractor or Federal employee, be free to step forward. The first job I was given in 1989, Mr. Chairman, when I entered, on a fellowship, the Department of Energy was writing the regulation to protect contractor whistleblowers. So this is something that is personal to me, as well, and we will continue to endeavor to be cooperative and to be responsive. These are incredibly important issues in the merits of the case, and we are going to keep working at it and making sure we do it with the speed and intensity and faith in the process and in our laws that is required.

Chairman ISSA. Thank you.

In closing, I trust that in your role over at the Department of Energy, and for all the cabinet administrators, that what has been discovered here and is still under an inspection and ultimate decision, is being looked at by every chief executive of every agency to find out whether it has happened, somehow, on their watch. This is one of those things where, and you worked in the nuclear world, if something happens somewhere, anywhere to a nuclear facility or a product, the first thing everyone says is could it happen to mine. If you have a fleet of 737's and a plane crashes anywhere in the world or has a problem, everybody inspects their aircraft.

The question of whether or not people have deliberately or inadvertently been discriminated against is one that I would trust that this hearing helps establish should be looked at not later than today throughout all the Federal Government.

I thank you for your testimony. I believe it has been helpful to that end.

We stand adjourned.

[Whereupon, at 12:22 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

AUG 22 2013



The Deputy Secretary of Energy
Washington, DC 20585

August 21, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Mr. Ranking Member:

At a recent hearing before your Committee, I shared the Department of Energy's (DOE) concerns regarding allegations of improper hiring practices at the Bonneville Power Administration (BPA). Many Members of the Committee raised the importance of accounting for any individuals, including veterans, who may have been disadvantaged by BPA's past hiring practices. I want to inform you of the steps the DOE is taking to remedy the situation.

The Department is fully committed to accounting for any and all individuals, including veterans, who may have been disadvantaged through improper actions. Our staff has been engaged deeply in the matter and is taking immediate steps to rectify the issue. DOE's Office of Human Capital Management has been reviewing and reconstructing BPA's hiring actions from the last several years to identify the individuals who have been affected.

BPA, with guidance from the Office of Human Capital Management, has already begun to reach out to individuals to provide priority consideration for positions at BPA for which they qualify. Because of the complexity of the issues and the nature of the hiring actions, reconstruction of each case is complex and time intensive, but we will continue to strive to rectify each case and extend offers of employment as soon as possible.

As I have publicly reaffirmed since the matters under review by the Inspector General came to light, BPA is an organization with a storied history, and remains vitally important today in serving the energy needs of the citizens of the Pacific Northwest and beyond. We are working actively to support BPA as it continues to fulfill its vital governmental responsibilities and to make progress on critical issues facing the organization and the region. We look forward to evaluating the results of all of the current reviews so that we can consider any appropriate further actions.



Printed with soy ink on recycled paper

Even as the Department works to remedy this situation, BPA is ensuring continuity and stability in its operations, and we are all grateful for the dedicated service of the thousands of BPA employees who work hard every day to fulfill their mission.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Daniel B. Poneman", with a stylized, flowing script.

Daniel B. Poneman

cc: The Honorable Doc Hastings
Chairman, Committee on Natural Resources

The Honorable Peter DeFazio
Ranking Member, Committee on Natural Resources